



February 18, 2009

HOUSE BILL No. 1634

DIGEST OF HB 1634 (Updated February 16, 2009 9:03 pm - DI 101)

Citations Affected: IC 4-22; IC 22-9; IC 23-2; IC 24-4.3; IC 24-4.4; IC 24-4.5; IC 26-1; IC 32-28; IC 35-45.

Synopsis: Mortgage loan creditors and originators. Makes various changes to the laws concerning licensing residential mortgage loan creditors and originators to comply with requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. Repeals provisions being superseded by this bill. Repeals provisions under the Uniform Consumer Credit Code concerning the following: (1) A definition index. (2) Revocations of certain licenses.

Effective: July 1, 2009.

Bardon

January 16, 2009, read first time and referred to Committee on Financial Institutions.
February 17, 2009, amended, reported — Do Pass.

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HB 1634—LS 7594/DI 110+



February 18, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1634

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-22-2-37.1, AS AMENDED BY P.L.90-2008,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 37.1. (a) This section applies to a rulemaking
4 action resulting in any of the following rules:

5 (1) An order adopted by the commissioner of the Indiana
6 department of transportation under IC 9-20-1-3(d) or
7 IC 9-21-4-7(a) and designated by the commissioner as an
8 emergency rule.

9 (2) An action taken by the director of the department of natural
10 resources under IC 14-22-2-6(d) or IC 14-22-6-13.

11 (3) An emergency temporary standard adopted by the
12 occupational safety standards commission under
13 IC 22-8-1.1-16.1.

14 (4) An emergency rule adopted by the solid waste management
15 board under IC 13-22-2-3 and classifying a waste as hazardous.

16 (5) A rule, other than a rule described in subdivision (6), adopted
17 by the department of financial institutions under IC 24-4.5-6-107

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and declared necessary to meet an emergency.

(6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.

(7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.

(8) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(9) A rule adopted under IC 16-19-3-5 or IC 16-41-2-1 that the executive board of the state department of health declares is necessary to meet an emergency.

(10) An emergency rule adopted by the Indiana finance authority under IC 8-21-12.

(11) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.

(12) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(13) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by or other date provided by federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(14) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(15) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

(16) An emergency rule adopted by the Indiana gaming commission under IC 4-32.2-3-3(b), IC 4-33-4-2, IC 4-33-4-3, IC 4-33-4-14, or IC 4-35-4-2.

(17) An emergency rule adopted by the alcohol and tobacco commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(18) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(19) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(20) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

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(21) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-15-41-15.

(22) An emergency rule adopted by the Indiana state board of animal health under IC 15-17-10-9.

(23) An emergency rule adopted by the board of directors of the Indiana education savings authority under IC 21-9-4-7.

(24) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-34 (repealed).

(25) An emergency rule adopted by the department of local government finance under IC 6-1.1-4-33 (repealed).

(26) An emergency rule adopted by the boiler and pressure vessel rules board under IC 22-13-2-8(c).

(27) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-37(l) (repealed) or an emergency rule adopted by the department of local government finance under IC 6-1.1-4-36(j) (repealed) or IC 6-1.1-22.5-20.

(28) An emergency rule adopted by the board of the Indiana economic development corporation under IC 5-28-5-8.

(29) A rule adopted by the department of financial institutions under IC 34-55-10-2.5.

(30) A rule adopted by the Indiana finance authority:

(A) under IC 8-15.5-7 approving user fees (as defined in IC 8-15.5-2-10) provided for in a public-private agreement under IC 8-15.5;

(B) under IC 8-15-2-17.2(a)(10):

(i) establishing enforcement procedures; and

(ii) making assessments for failure to pay required tolls;

(C) under IC 8-15-2-14(a)(3) authorizing the use of and establishing procedures for the implementation of the collection of user fees by electronic or other nonmanual means; or

(D) to make other changes to existing rules related to a toll road project to accommodate the provisions of a public-private agreement under IC 8-15.5.

(31) An emergency rule adopted by the board of the Indiana health informatics corporation under IC 5-31-5-8.

(32) A rule adopted by the department of financial institutions under IC 24-4.3-5-6 and determined necessary to meet an emergency.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

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(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the format of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the publisher for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the format of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the publisher shall:

- (1) accept the rule for filing; and
- (2) electronically record the date and time that the rule is accepted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

- (1) The effective date of the statute delegating authority to the agency to adopt the rule.
- (2) The date and time that the rule is accepted for filing under subsection (e).
- (3) The effective date stated by the adopting agency in the rule.
- (4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, IC 22-8-1.1-16.1, and IC 22-13-2-8(c), and except as provided in subsections (j), (k), and (l), a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(13), (a)(24), (a)(25), or (a)(27), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. The extension period for a rule adopted under subsection (a)(28) may not exceed the period for which the original rule was in effect. A rule adopted under subsection (a)(13) may be extended for two (2) extension periods. Subject to subsection (j), a rule adopted under subsection (a)(24), (a)(25), or (a)(27) may be extended for an unlimited number of extension periods. Except for a rule adopted under subsection (a)(13), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

- (1) sections 24 through 36 of this chapter; or

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(2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(8), (a)(12), or (a)(29) expires on the earlier of the following dates:

(1) The expiration date stated by the adopting agency in the rule.

(2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

(j) A rule described in subsection (a)(24) or (a)(25) expires not later than January 1, 2006.

(k) A rule described in subsection (a)(28) expires on the expiration date stated by the board of the Indiana economic development corporation in the rule.

(l) A rule described in subsection (a)(30) expires on the expiration date stated by the Indiana finance authority in the rule.

(m) A rule described in subsection (a)(5) or (a)(6) expires on the date the department is next required to issue a rule under the statute authorizing or requiring the rule.

SECTION 2. IC 22-9-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. As used in this chapter:

(a) "Person" means one (1) or more individuals, partnerships, associations, organizations, limited liability companies, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons.

(b) "Commission" means the civil rights commission created under section 4 of this chapter.

(c) "Director" means the director of the civil rights commission.

(d) "Deputy director" means the deputy director of the civil rights commission.

(e) "Commission attorney" means the deputy attorney general, such assistants of the attorney general as may be assigned to the commission, or such other attorney as may be engaged by the commission.

(f) "Consent agreement" means a formal agreement entered into in lieu of adjudication.

(g) "Affirmative action" means those acts that the commission determines necessary to assure compliance with the Indiana civil rights law.

(h) "Employer" means the state or any political or civil subdivision thereof and any person employing six (6) or more persons within the

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state, except that the term "employer" does not include:

(1) any nonprofit corporation or association organized exclusively for fraternal or religious purposes;

(2) any school, educational, or charitable religious institution owned or conducted by or affiliated with a church or religious institution; or

(3) any exclusively social club, corporation, or association that is not organized for profit.

(i) "Employee" means any person employed by another for wages or salary. However, the term does not include any individual employed:

(1) by his parents, spouse, or child; or

(2) in the domestic service of any person.

(j) "Labor organization" means any organization that exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment or for other mutual aid or protection in relation to employment.

(k) "Employment agency" means any person undertaking with or without compensation to procure, recruit, refer, or place employees.

(l) "Discriminatory practice" means:

(1) the exclusion of a person from equal opportunities because of race, religion, color, sex, disability, national origin, or ancestry;

(2) a system that excludes persons from equal opportunities because of race, religion, color, sex, disability, national origin, or ancestry;

(3) the promotion of racial segregation or separation in any manner, including but not limited to the inducing of or the attempting to induce for profit any person to sell or rent any dwelling by representations regarding the entry or prospective entry in the neighborhood of a person or persons of a particular race, religion, color, sex, disability, national origin, or ancestry; or

(4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is committed by a covered entity (as defined in IC 22-9-5-4).

Every discriminatory practice relating to the acquisition or sale of real estate, education, public accommodations, employment, or the extending of credit (as defined in ~~IC 24-4.5-1-301~~ **IC 24-4.5-1-301.5**) shall be considered unlawful unless it is specifically exempted by this chapter.

(m) "Public accommodation" means any establishment that caters or offers its services or facilities or goods to the general public.

(n) "Complainant" means:

(1) any individual charging on his own behalf to have been

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personally aggrieved by a discriminatory practice; or
 (2) the director or deputy director of the commission charging that a discriminatory practice was committed against a person other than himself or a class of people, in order to vindicate the public policy of the state (as defined in section 2 of this chapter).

(o) "Complaint" means any written grievance that is:

- (1) sufficiently complete and filed by a complainant with the commission; or
- (2) filed by a complainant as a civil action in the circuit or superior court having jurisdiction in the county in which the alleged discriminatory practice occurred.

The original of any complaint filed under subdivision (1) shall be signed and verified by the complainant.

(p) "Sufficiently complete" refers to a complaint that includes:

- (1) the full name and address of the complainant;
- (2) the name and address of the respondent against whom the complaint is made;
- (3) the alleged discriminatory practice and a statement of particulars thereof;
- (4) the date or dates and places of the alleged discriminatory practice and if the alleged discriminatory practice is of a continuing nature the dates between which continuing acts of discrimination are alleged to have occurred; and
- (5) a statement as to any other action, civil or criminal, instituted in any other form based upon the same grievance alleged in the complaint, together with a statement as to the status or disposition of the other action.

No complaint shall be valid unless filed within one hundred eighty (180) days from the date of the occurrence of the alleged discriminatory practice.

(q) "Sex" as it applies to segregation or separation in this chapter applies to all types of employment, education, public accommodations, and housing. However:

- (1) it shall not be a discriminatory practice to maintain separate rest rooms;
- (2) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit

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or employ any other individual in any program on the basis of sex in those certain instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(3) it shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one (1) sex only.

(r) "Disabled" or "disability" means the physical or mental condition of a person that constitutes a substantial disability. In reference to employment, under this chapter, "disabled or disability" also means the physical or mental condition of a person that constitutes a substantial disability unrelated to the person's ability to engage in a particular occupation.

SECTION 3. IC 23-2-5-3, AS AMENDED BY P.L.145-2008, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) As used in this chapter, "certificate of registration" means a certificate issued by the commissioner authorizing an individual to:

(1) engage in origination activities on behalf of a licensee; or

(2) act as a principal manager on behalf of a licensee.

(b) As used in this chapter, "license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.

(c) As used in this chapter, "licensee" means a person that is issued a license under this chapter.

(d) As used in this chapter, "loan broker" means any person who, in return for any consideration from any source procures, attempts to procure, or assists in procuring, a loan from a third party or any other person, whether or not the person seeking the loan actually obtains the loan. "Loan broker" does not include:

(1) any supervised financial organization, (as defined in ~~IC 24-4.5-1-301(20)~~, **IC 26-1-4-102.5**), including a bank, savings bank, trust company, savings association, or credit union;

(2) any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(3) any insurance company;

(4) any person arranging financing for the sale of the person's

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product; or

(5) a creditor that is licensed under IC 24-4.4-2-402.

(e) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(f) As used in this chapter, "origination activities" means communication with or assistance of a borrower or prospective borrower in the selection of loan products or terms.

(g) As used in this chapter, "originator" means a person engaged in origination activities. The term "originator" does not include a person who performs origination activities for any entity that is not a loan broker under subsection (d).

(h) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(i) As used in this chapter, "registrant" means an individual who is registered:

- (1) to engage in origination activities under this chapter; or
- (2) as a principal manager.

(j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls ten percent (10%) or more of the equity interest in a loan broker licensed or required to be licensed under this chapter, regardless of whether the person owns or controls the equity interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

(k) As used in this chapter, "principal manager" means an individual who:

- (1) has at least three (3) years of experience:
 - (A) as a loan broker; or
 - (B) in financial services;
 that is acceptable to the commissioner; and
- (2) is principally responsible for the supervision and management of the employees and business affairs of a licensee.

(l) As used in this chapter, "personal information" includes any of the following:

- (1) An individual's first and last names or first initial and last name.
- (2) Any of the following data elements:
 - (A) A Social Security number.
 - (B) A driver's license number.
 - (C) A state identification card number.
 - (D) A credit card number.

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- 1 (E) A financial account number or debit card number in
 2 combination with a security code, password, or access code
 3 that would permit access to the person's account.
 4 (3) With respect to an individual, any of the following:
 5 (A) Address.
 6 (B) Telephone number.
 7 (C) Information concerning the individual's:
 8 (i) income or other compensation;
 9 (ii) credit history;
 10 (iii) credit score;
 11 (iv) assets;
 12 (v) liabilities; or
 13 (vi) employment history.

14 (m) As used in this chapter, personal information is "encrypted" if
 15 the personal information:

- 16 (1) has been transformed through the use of an algorithmic
 17 process into a form in which there is a low probability of
 18 assigning meaning without use of a confidential process or key;
 19 or

- 20 (2) is secured by another method that renders the personal
 21 information unreadable or unusable.

22 (n) As used in this chapter, personal information is "redacted" if the
 23 personal information has been altered or truncated so that not more
 24 than the last four (4) digits of:

- 25 (1) a Social Security number;
 26 (2) a driver's license number;
 27 (3) a state identification number; or
 28 (4) an account number;

29 are accessible as part of the personal information.

30 SECTION 4. IC 24-4.3 IS ADDED TO THE INDIANA CODE AS
 31 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 32 2009]:

33 **ARTICLE 4.3. MORTGAGE LOAN ORIGINATOR**
 34 **LICENSING ACT**

35 **Chapter 1. General Provisions**

36 **Sec. 1. This article shall be known and may be cited as the**
 37 **Mortgage Loan Originator Licensing Act.**

38 **Sec. 2. (a) This article shall be liberally construed and applied**
 39 **to promote its underlying purposes and policies.**

40 **(b) The underlying purposes and policies of this article are:**

- 41 **(1) to permit and encourage the development of fair and**
 42 **economically sound mortgage lending practices; and**

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(2) to conform the regulation of mortgage lending practices to applicable state and federal laws, rules, and regulations.

(c) A reference to a requirement imposed by this article includes reference to a related rule or guidance document of the department adopted under this article.

(d) To carry out the purposes of this article, the director has the broad administrative authority to:

- (1) administer, interpret, and enforce this article; and
- (2) adopt rules or issue policies and guidance in implementing this article.

(e) A reference to a federal law in this article is a reference to the law in effect December 31, 2008.

Sec. 3. This article:

- (1) is a general statute intended as a unified coverage of its subject matter; and
- (2) any part of this article may not be considered to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Sec. 4. The provisions of this article are severable, so that if:

- (1) any provision of this article; or
- (2) the application of this article to any person or circumstances;

is held invalid, the invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application.

Sec. 5. (a) Except as provided in subsection (b), this article applies to a mortgage transaction:

- (1) that is secured by an interest in land in Indiana; and
- (2) the closing for which takes place after June 30, 2010.

(b) This article does not apply to a mortgage transaction if:

- (1) the debtor is not a resident of Indiana at the time the transaction is entered into; and
- (2) the laws of the debtor's state of residence require that the transaction be made under the laws of the state of the debtor's residence.

Sec. 6. This article does not apply to the following:

- (1) Extensions of credit to government or governmental agencies or instrumentalities.
- (2) A mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
- (3) An extension of credit primarily for a business, a

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commercial, or an agricultural purpose.

(4) An extension of credit originated by:

(A) a depository institution;

(B) subsidiaries that are:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration.

(5) A mortgage transaction originated by a registered mortgage loan originator, when acting for an entity described in subdivision (4). However, a privately insured state chartered credit union must comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under Section 1507 of the Safe and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE).

(6) An individual who offers or negotiates terms of a mortgage transaction with or on behalf of an immediate family member of the individual.

(7) An individual who offers or negotiates terms of a mortgage transaction secured by a dwelling that served as the individual's residence.

(8) Unless the attorney is compensated by:

(A) a lender;

(B) a mortgage broker;

(C) another mortgage loan originator; or

(D) any agent of the lender, mortgage broker, or other mortgage loan originator described in clauses (A) through (C);

a licensed attorney who negotiates the terms of a mortgage transaction on behalf of a client as an ancillary matter to the attorney's representation of the client.

(9) Agencies, instrumentalities, and government owned corporations of the United States, including United States government sponsored enterprises.

Sec. 7. (a) A violation of a state or federal law, regulation, or rule applicable to mortgage transactions is a violation of this article.

(b) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to mortgage transactions.

Sec. 8. In the department's examination and regulatory

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activities related to licensees under this article, the department may cooperate with the Indiana securities commissioner in the regulation of individuals who, in addition to business conducted under this article, also conduct a loan broker business consistent with the IC 23-2-5.

Chapter 2. Definitions

Sec. 1. In addition to definitions appearing in other chapters of this article, the definitions in this chapter apply throughout this article.

Sec. 2. "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

- (1) controls;
- (2) is controlled by; or
- (3) is under common control with;

the person subject to this article.

Sec. 3. "Agreement" means the bargain of the parties in fact as found in the parties' language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

Sec. 4. "Agricultural products" includes agricultural, horticultural, viticultural, dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, any products raised or produced on farms, and any products processed or manufactured from products raised or produced on farms.

Sec. 5. "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products.

Sec. 6. "Civil court" means any court in Indiana having jurisdiction over civil cases.

Sec. 7. "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

- (1) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;
- (2) the buyer is a person other than an organization;
- (3) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
- (4) either the debt is payable in installments or a credit service charge is made; and
- (5) with respect to a sale of goods or services, either the

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amount financed does not exceed fifty thousand dollars (\$50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

Sec. 8. "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

Sec. 9. "Creditor" has the meaning set forth in:

- (1) IC 24-4.4-1-301 for first lien mortgage transactions; and
- (2) IC 24-4.5-1-301.5 for subordinate lien mortgage transactions.

Sec. 10. "Department" refers to the department of financial institutions.

Sec. 11. "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

Sec. 12. "Director" refers to the director of the department of financial institutions or the director's designee.

Sec. 13. "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (1) condominium unit;
- (2) cooperative unit;
- (3) mobile home; or
- (4) trailer;

that is used as a residence.

Sec. 14. "Employee" has the meaning set forth in IC 22-2-2-3.

Sec. 15. "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

Sec. 16. "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Sec. 17. "Individual" means a natural person.

Sec. 18. "Licensee" means a person licensed as a mortgage loan originator under this article.

Sec. 19. "Loan" includes:

- (1) the creation of debt by:
 - (A) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or

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(B) the extension of credit by a person who engages as a seller in credit transactions primarily secured by an interest in land;

(2) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and

(3) the forbearance of debt arising from a loan.

Sec. 20. "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under IC 24-4.4 or IC 24-4.5. For purposes of this section, the term "clerical or support duties" may include, after the receipt of an application, the following:

(1) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(2) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

(A) offering or negotiating loan rates or terms; or

(B) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

Sec. 21. "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain, engages in taking a mortgage transaction application or offering or negotiating terms of a mortgage transaction under IC 24-4.4 or IC 24-4.5. The term does not include the following:

(1) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under IC 24-4.4 or IC 24-4.5.

(2) Unless the person or entity is compensated by:

(A) a creditor;

(B) a loan broker;

(C) another mortgage loan originator; or

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(D) any agent of the creditor, loan broker, or other mortgage loan originator described in clauses (A) through (C);

a person that performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(3) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

Sec. 22. "Mortgage transaction" means a loan or consumer credit sale in which a mortgage or a land contract is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

Sec. 23. "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

Sec. 24. "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

Sec. 25. "Organization" means a corporation, a government or government subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

Sec. 26. "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

Sec. 27. "Person" includes an individual or an organization.

Sec. 28. "Principal" of a mortgage transaction means the total of:

(1) the net amount paid to, receivable by, or paid or payable for the account of the debtor; and

(2) to the extent that payment is deferred, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees if not included in subdivision (1).

Sec. 29. "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

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(1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(3) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(4) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(5) Offering to engage in any activity, or act in any capacity, described in this section.

Sec. 30. "Registered mortgage loan originator" means any individual who:

(1) meets the definition of mortgage loan originator and is an employee of:

(A) a depository institution;

(B) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration; and

(2) is registered with, and maintains a unique identifier through, the NMLSR.

Sec. 31. "Revolving mortgage transaction" means an arrangement between a creditor and a debtor in which:

(1) the creditor permits the debtor to obtain advances from time to time;

(2) the unpaid balances of principal, finance charges, and other appropriate charges are debited to an account; and

(3) the debtor has the privilege of paying the balances in installments.

Sec. 32. "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

Chapter 3. Licensing of Mortgage Loan Originators

Sec. 1. (a) Except as provided in IC 24-4.3-1-6(5) and subsections (b) and (c), after June 30, 2010, an individual may not engage in the business of a mortgage loan originator without obtaining a mortgage loan originator license issued by the department under this article and annually maintaining the license.

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(b) An individual who conducts a mortgage loan originator business as a sole proprietor is required to obtain only a creditor's license under IC 24-4.4 or IC 24-4.5. However, the individual must meet the background, education, and testing requirements prescribed for a mortgage loan originator.

(c) Notwithstanding the licensing requirements under this section, an individual acting exclusively as a servicer engaging in loss mitigation efforts with respect to an existing mortgage transaction is not required to meet the education, testing, background, and licensing standards of this article until July 1, 2011, to the extent that this extension of time is approved by the United States Department of Housing and Urban Development.

(d) Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the NMLSR. Each licensed mortgage loan originator must be employed by, and associated with, a licensed creditor in the NMLSR in order to originate loans.

(e) Applicants for a license must apply for a license under this article in a form prescribed by the director. Each form:

- (1) must contain content as set forth by rule, instruction, or procedure of the director; and
- (2) may be changed or updated as necessary by the director in order to carry out the purposes of this article.

(f) To fulfill the purposes of this article, the director may establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to:

- (1) collect and maintain records; and
- (2) process transaction fees or other fees related to licensees or other persons subject to this article.

(g) For the purpose of participating in the NMLSR, the director may:

- (1) waive or modify, in whole or in part, by rule or order, any or all of the requirements of this article; and
- (2) establish new requirements as reasonably necessary to participate in the NMLSR.

Sec. 2. (a) The department shall receive and act on all applications for licenses to engage as mortgage loan originators in mortgage transactions. Applications must be made as prescribed by the director.

(b) A license may not be issued unless the department finds that the professional training and experience, financial responsibility, character, and fitness of the applicant is such as to warrant belief

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that the mortgage loan originator will operate honestly and fairly within the purposes of this article.

(c) The director is entitled to request evidence of compliance with this section at:

- (1) the time of application;
- (2) the time of renewal of a license; or
- (3) any other time considered necessary by the director.

(d) Evidence of compliance with this section must include:

- (1) criminal background checks, as described in section 3 of this chapter, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for the applicant;
- (2) credit histories as described in section 4 of this chapter;
- (3) prelicensing education requirements as described in section 5 of this chapter;
- (4) prelicensing written test requirements as described in section 6 of this chapter;
- (5) surety bond requirements as described in section 7 of this chapter;
- (6) a review of licensure actions in this and other states; and
- (7) other background checks considered necessary by the director.

(e) An individual who has had a mortgage loan originator license revoked in any state may not be licensed as a mortgage loan originator under this article. The individual must submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR and the director to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(f) For purposes of this section and in order to reduce the points of contact that the director may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(g) Upon written request, an applicant is entitled to a hearing on the question of the qualifications of the applicant for a license in the manner provided in IC 4-21.5.

(h) The applicant shall pay the following fees at the time designated by the department:

- (1) An initial license fee as established by the department under IC 28-11-3-5.

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(2) An annual renewal fee as established by the department under IC 28-11-3-5.

(3) Examination fees as established by the department under IC 28-11-3-5.

(i) A fee as established by the department under IC 28-11-3-5 may be charged for each day a fee under subsection (h)(2) or (h)(3) is delinquent.

(j) A license issued under this section is not assignable or transferable.

Sec. 3. (a) When the director requests a national criminal history background check under section 2(d)(1) of this chapter, the director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested under section 2(c) of this chapter. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(b) For purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency.

(c) If an individual:

(1) has been convicted of or pleaded guilty or nolo contendere to a felony during the seven (7) year period preceding the date of the application; or

(2) has, at any time preceding the date of application, been convicted of or pleaded guilty or nolo contendere to a felony involving an act of fraud, dishonesty, breach of trust, or money laundering;

the individual may not be approved for licensing as a mortgage loan originator under this article.

Sec. 4. (a) If the director requests a credit report under section 2 of this chapter, the individual to whom the request is made shall pay any fees or costs associated with procuring the report.

(b) An individual shall submit personal history and experience

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information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR or the director to obtain an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).

(c) The director may consider one (1) or more of the following when determining if an individual has demonstrated financial responsibility:

- (1) Bankruptcies filed within the last ten (10) years.
- (2) Current outstanding judgments, except judgments solely as a result of medical expenses.
- (3) Current outstanding tax liens or other government liens or filings.
- (4) Foreclosures within the past three (3) years.
- (5) A pattern of serious delinquent accounts within the past three (3) years.

Sec. 5. (a) To meet the preclicensing education requirements referred to in section 2(d)(3) of this chapter, a person shall complete at least twenty (20) hours of education approved in accordance with subsection (b), which must include at least the following:

- (1) Three (3) hours of federal law and regulations.
- (2) Three (3) hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues.
- (3) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a), preclicensing education courses shall be reviewed and approved by the NMLSR based upon reasonable standards. Review and approval of a preclicensing education course must include review and approval of the course provider.

(c) The NMLSR may approve a preclicensing education course that is provided by an employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Preclicensing education may be offered in a classroom, online, or by any other means approved by the NMLSR.

(e) The preclicensing education requirements approved by the NMLSR in subsection (a) for any state shall be accepted as completion of preclicensing education requirements in this state.

(f) A person formerly licensed under this article, applying to be licensed again, shall prove that the person has completed all the

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continuing education requirements for the year in which the license was last held.

Sec. 6. (a) To meet the written test requirement referred to in section 2(d)(4) of this chapter, an individual must pass, in accordance with the standards established under this section, a qualified written test developed by the NMLSR and administered by a test provider approved by the NMLSR based upon reasonable standards.

(b) A written test may not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

- (1) ethics;
- (2) federal law and regulation pertaining to mortgage origination;
- (3) state law and regulation pertaining to mortgage origination; and
- (4) federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) This section does not prohibit a test provider approved by the NMLSR from providing a test at the location of:

- (1) the employer of the applicant;
- (2) any subsidiary or affiliate of the employer of the applicant;
- or
- (3) any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) The following are the standards for demonstrating minimum competence with respect to the testing requirement:

- (1) Passing Score - An individual does not pass a qualified written test unless the individual achieves a test score of at least seventy-five percent (75%) correct answers to questions.
- (2) Initial Retests - An individual may retake a test three (3) consecutive times with each consecutive test taken at least thirty (30) days after the preceding test.
- (3) Subsequent Retests - After failing three (3) consecutive tests, an individual must wait at least six (6) months before taking the test again.
- (4) Retest After Lapse of License - A licensed mortgage loan originator who fails to maintain a valid license for a period of at least five (5) years must retake the test to be issued a new

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license, not taking into account any time during which the individual is a registered mortgage loan originator.

Sec. 7. (a) Each creditor and mortgage loan originator must be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee or exclusive agent of:

(1) a person subject to licensing under IC 24-4.4 or IC 24-4.5; or

(2) an entity exempt from licensing under IC 24-4.4 or IC 24-4.5 that registers with the NMLSR;

the surety bond of the person subject to licensing under IC 24-4.4 or IC 24-4.5 or entity exempt from licensing under IC 24-4.4 or IC 24-4.5 that registers with the NMLSR may be used instead of the mortgage loan originator's surety bond requirement under this section.

(b) A surety bond:

(1) must provide coverage for each mortgage loan originator in an amount prescribed in subsection (d); and

(2) must be in a form prescribed by the director.

(c) The director may adopt rules or guidance with respect to the requirements for a surety bond as are necessary to accomplish the purposes of this article.

(d) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of mortgage transactions originated as determined by the director.

(e) If an action is commenced on the surety bond of a:

(1) licensee; or

(2) person subject to or an entity exempt from licensing under IC 24-4.4 or IC 24-4.5 as described under subsection (a);

the director may require the filing of a new bond.

(f) A:

(1) licensee; or

(2) person subject to or an entity exempt from licensing under IC 24-4.4 or IC 24-4.5 as described under subsection (a);

shall file a new surety bond immediately upon recovery of any action on the surety bond required under this section.

Sec. 8. (a) Subject to subsection (f), the director shall designate the NMLSR to serve as the sole entity responsible for:

(1) processing applications and renewals for licenses under this article;

(2) issuing unique identifiers for:

(A) licensees under this article;

(B) creditors licensed under IC 24-4.4 or IC 24-4.5; and

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- 1 (C) entities exempt from licensing under IC 24-4.4 and
 2 IC 24-4.5 that employ licensed mortgage loan originators;
 3 and
 4 (3) performing other services that the director determines are
 5 necessary for the orderly administration of the department's
 6 licensing system under this article.
- 7 (b) Subject to the confidentiality provisions contained in
 8 IC 5-14-3, this section, and IC 28-1-2-30, the director shall
 9 regularly report significant or recurring violations of this article
 10 to the NMLSR.
- 11 (c) Subject to the confidentiality provisions contained in
 12 IC 5-14-3, this section, and IC 28-1-2-30, the director may report
 13 complaints received regarding licensees under this article to the
 14 NMLSR.
- 15 (d) The director shall report publicly adjudicated licensure
 16 actions against a licensee to the NMLSR.
- 17 (e) The director shall establish a process in which licensees may
 18 challenge information reported to the NMLSR by the department.
- 19 (f) The director's authority to designate the NMLSR under
 20 subsection (a) is subject to the following:
- 21 (1) Except with respect to:
- 22 (A) a privately insured state chartered credit union; and
 23 (B) entities exempt from licensing under IC 24-4.4 or
 24 IC 24-4.5 that employ licensed mortgage loan originators;
 25 the director or the director's designee may not require any
 26 person exempt from licensure under this article, or any
 27 employee or agent of an exempt person, to submit information
 28 to or participate in the NMLSR.
- 29 (2) Information stored in the NMLSR is subject to the
 30 confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A
 31 person may not:
- 32 (A) obtain information from the NMLSR, unless the
 33 person is authorized to do so by statute;
 34 (B) initiate any civil action based on information obtained
 35 from the NMLSR if the information is not otherwise
 36 available to the person under any other state law; or
 37 (C) initiate any civil action based on information obtained
 38 from the NMLSR if the person could not have initiated the
 39 action based on information otherwise available to the
 40 person under any other state law.
- 41 (3) Documents, materials, and other forms of information in
 42 the control or possession of the NMLSR that are confidential

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under IC 28-1-2-30 and that are:

(A) furnished by the director, the director's designee, or a licensee; or

(B) otherwise obtained by the NMLSR;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.

(4) Disclosure of documents, materials, and information:

(A) to the director; or

(B) by the director;

under this section does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(5) Information provided to the NMLSR is subject to IC 4-1-11.

(6) This section does not limit or impair a person's right to:

(A) obtain information;

(B) use information as evidence in a civil action or proceeding; or

(C) use information to initiate a civil action or proceeding; if the information may be obtained from the director or the director's designee under any law.

(7) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continues to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(8) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the

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American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the director.

(9) Information or material that is subject to a privilege or confidentiality under subdivision (7) is not subject to:

(A) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(B) subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(10) IC 5-14-3 relating to the disclosure of confidential supervisory information or any information or material described in subdivision (7) that is inconsistent with subdivision (7) is superseded by the requirements of this section.

(11) This section does not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a licensed mortgage loan originator that are included in the NMLSR for access by the public.

(12) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether a NMLSR processing fee is reasonable, the director shall:

(A) require review of; and

(B) make available;

the audited financial statements of the NMLSR.

Sec. 9. (a) The minimum standards for license renewal for mortgage loan originators include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under section 2 of this chapter.

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in section 10 of this chapter.

(3) The mortgage loan originator has paid all required fees for renewal of the license.

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(b) If a mortgage loan originator fails to satisfy the minimum standards for license renewal, the mortgage loan originator's license expires. The director may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the NMLSR.

Sec. 10. (a) To meet the annual continuing education requirements referred to in section 9 of this chapter, a licensed mortgage loan originator shall complete at least eight (8) hours of education approved in accordance with subsection (b), which must include at least the following:

(1) Three (3) hours of federal law and regulations.

(2) Two (2) hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues.

(3) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a), continuing education courses shall be reviewed and approved by the NMLSR based upon reasonable standards. Review and approval of a continuing education course must include review and approval of the course provider.

(c) The NMLSR may approve an education course that is provided by:

(1) a creditor;

(2) an employer of the mortgage loan originator; or

(3) an entity that is affiliated with the creditor or employer of the mortgage loan originator by an agency contract; or

(4) any subsidiary or affiliate of an employer or entity described in subsection (2) or (3).

(d) Continuing education may be offered in a classroom, online, or by any other means approved by the NMLSR.

(e) An individual subject to the continuing education requirements under this section:

(1) except as provided in section 9(b) of this chapter and subsection (i), may receive credit for a continuing education course only in the year in which the course is taken; and

(2) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) An individual subject to the continuing education requirements under this section who is an approved instructor of approved continuing education courses may receive credit for the individual's own annual continuing education requirement at the

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rate of two (2) hours credit for every one (1) hour taught.

(g) A person who has successfully completed the education requirements approved by the NMLSR in subsection (a) for any state shall be accepted as completion of the continuing education requirements in this state.

(h) A licensed mortgage loan originator who becomes unlicensed must complete the continuing education requirements for the last year in which the license was held before issuance of a new or renewed license.

(i) A person meeting the requirements of section 9(a)(1) and 9(a)(3) of this chapter may make up any deficiency in continuing education as established by rule of the department or policy of the director.

Sec. 11. (a) The department may issue to a person licensed to engage in a mortgage transaction as a mortgage loan originator an order to show cause why the person's license should not be revoked or suspended for a period determined by the department. The order must state the place and time for a meeting with the department that is not less than ten (10) days after the date of the order. After the meeting, the department shall revoke or suspend the license if the department finds that:

(1) the licensee has repeatedly and willfully violated:

(A) this article or any rule or order lawfully adopted or issued under this article; or

(B) any other state or federal law, regulation, or rule applicable to a mortgage transaction;

(2) the licensee does not meet the licensing qualifications contained in section 2 of this chapter; or

(3) facts or conditions exist that would clearly have justified the department in refusing to grant a license had the facts or conditions been known to exist at the time the application for the license was made.

(b) Except as provided in section 9(b) of this chapter, a suspension or revocation of a license is not authorized under this article unless before instituting proceedings to suspend or revoke the license, the:

(1) department gives notice to the licensee of the conduct or facts that warrant the intended suspension or revocation; and

(2) licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(c) If the department finds that probable cause for revocation of a license exists and that enforcement of this article requires

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1 immediate suspension of the license pending investigation, the
 2 department may, after a hearing with the licensee upon five (5)
 3 days written notice to the licensee, enter an order suspending the
 4 license for not more than thirty (30) days.

5 (d) Whenever the department revokes or suspends a license, the
 6 department shall enter an order to that effect and notify the
 7 licensee of the revocation or suspension. Not later than five (5) days
 8 after an order is entered to suspend or revoke a license, the
 9 department shall deliver to the licensee a copy of the order and the
 10 findings supporting the order.

11 (e) Any person holding a license to engage in a mortgage
 12 transaction as a mortgage loan originator may relinquish the
 13 license by notifying the department in writing of the
 14 relinquishment. However, a relinquishment under this subsection
 15 does not affect the person's liability for acts previously committed
 16 and coming within the scope of this article.

17 (f) If the director determines it to be in the public interest, the
 18 director may pursue revocation of a license of a licensee who has
 19 relinquished the license under subsection (e).

20 (g) A revocation, suspension, or relinquishment of a license does
 21 not impair or affect the obligation of any preexisting lawful
 22 contract between:

- 23 (1) the person whose license has been revoked, suspended, or
- 24 relinquished; and
- 25 (2) any debtor.

26 (h) The department may reinstate a license to or terminate a
 27 suspension of a license of a person whose license has been
 28 suspended if the director determines that, at the time the
 29 determination is made, there is no fact or condition that exists that
 30 clearly would justify the department in refusing to reinstate a
 31 license.

32 (i) If the director:

- 33 (1) has just cause to believe an emergency exists from which
- 34 it is necessary to protect the interests of the public; or
- 35 (2) determines that a license was obtained for the benefit of,
- 36 or on behalf of, a person who does not qualify for a license;
- 37 the director may proceed with the revocation of the license under
- 38 IC 4-21.5-3-6.

39 Chapter 4. Records; Miscellaneous

40 Sec. 1. (a) Every licensee shall maintain records in a manner
 41 that will enable the department to determine whether the licensee
 42 is complying with this article. The record keeping system of a

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licensee is sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever the records are located. Records concerning any mortgage transaction shall be retained for two (2) years after the making of the final entry relating to the transaction, but in the case of a revolving mortgage transaction, the two (2) years required under this subsection is measured from the date of each entry relating to the transaction.

(b) The unique identifier of any person originating a mortgage transaction must be clearly shown on all mortgage transaction application forms and any other documents as required by the director.

(c) Every licensee shall use automated examination and regulatory software designated by the director, including third party software. Use of the software consistent with guidance and policies issued by the director is not a violation of IC 28-1-2-30.

(d) A license mortgage loan originator shall file notification with the department if the licensed mortgage loan originator:

- (1) files for bankruptcy or is served in a foreclosure action; or
- (2) is subject to revocation or suspension proceedings by a state government authority with regard to the mortgage loan originator's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(e) A licensee shall file notification with the department if the licensee has been convicted of or pleaded guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction not later than thirty (30) days after the date of the event described in this subsection.

Sec. 2. A mortgage loan originator shall comply with IC 6-1.1-12-43, to the extent applicable.

Sec. 3. A violation by a mortgage loan originator in a mortgage transaction of Section 125 of the Federal Consumer Protection Act (15 U.S.C. 1635) concerning a debtor's right to rescind a transaction constitutes a violation of this article.

Chapter 5. Compliance; Enforcement

Sec. 1. This article applies to a person that engages as a mortgage loan originator in a mortgage transaction in Indiana. The authority of this article remains in effect whether a licensee acts or claims to act under any licensing or registration law of this

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state or claims to act without such authority.

Sec. 2. (a) In addition to other powers granted by this article, the department, within the limitations provided by law, may:

(1) receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the department's own initiative;

(2) counsel persons and groups on their rights and duties under this article;

(3) adopt, amend, and repeal rules, orders, policies, and forms to carry out this article;

(4) appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the department in court.

(b) Liability may not be imposed under this article for an act done or omitted in conformity with a rule, written notice, written opinion, written interpretation, or written directive of the department notwithstanding the fact that after the act is done or omitted the rule, written notice, written opinion, written interpretation, or written directive is for any reason:

(1) amended or repealed; or

(2) determined by judicial or other authority to be invalid.

Sec. 3. (a) In administering this article and in order to determine whether this article is being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as necessary to determine compliance. Records subject to examination under this section include the following:

(1) Training, operating, and policy manuals.

(2) Minutes of:

(A) management meetings; and

(B) other meetings.

(3) Financial records, credit files, and data bases.

(4) Other records that the department determines are necessary to perform its investigation or examination.

(b) The department may:

(1) administer oaths or affirmations, subpoena witnesses, and compel the attendance of witnesses; and

(2) adduce evidence and require the production of any matter that is relevant to an investigation.

The department shall determine the sufficiency of the records maintained and whether the person has made the required

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1 information reasonably available. The records concerning any
 2 transaction subject to this article shall be retained for two (2) years
 3 after the making of the final entry relating to the mortgage
 4 transaction, but in the case of a revolving mortgage transaction the
 5 two (2) year period is measured from the date of each entry.

6 (c) The department's examination and investigatory authority
 7 under this article includes the authority to investigate complaints
 8 filed with the department by debtors.

9 (d) The department shall be given free access to the records
 10 wherever the records are located. In making any examination or
 11 investigation authorized by this article, the director may control
 12 access to any documents and records of a licensee. The director
 13 may take possession of the documents and records or place a
 14 person in exclusive charge of the documents and records in the
 15 place where the documents are usually kept. During the period of
 16 control, a licensee may not remove or attempt to remove any of the
 17 documents and records except under a court order or with the
 18 consent of the director. Unless the director has reasonable grounds
 19 to believe the documents or records of the licensee have been, or
 20 are, at risk of being altered or destroyed for purposes of concealing
 21 a violation of this article, the licensee shall have access to the
 22 documents or records as necessary to conduct the licensee's
 23 ordinary business affairs. If the licensee's records are located
 24 outside Indiana, the records shall be made available to the
 25 department at a convenient location within Indiana, or the licensee
 26 shall pay the reasonable and necessary expenses for the
 27 department or the department's representative to examine the
 28 records where they are maintained. The department may designate
 29 comparable officials of the state in which the records are located
 30 to inspect the records on behalf of the department.

31 (e) Upon a licensee's failure without lawful excuse to obey a
 32 subpoena or to give testimony and upon reasonable notice by the
 33 department to all affected persons, the department may apply to
 34 any civil court with jurisdiction for an order compelling
 35 compliance.

36 (f) The department shall not make public:

- 37 (1) the name or identity of a person whose acts or conduct the
- 38 department investigates under this section; or
- 39 (2) the facts discovered in the investigation.

40 However, this subsection does not apply to civil actions or
 41 enforcement proceedings under this article.

42 Sec. 4. (a) To carry out the purposes of this article, the director

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1 may:

- 2 (1) retain attorneys, accountants, or other professionals and
 3 specialists as examiners, auditors, or investigators to conduct
 4 or assist in the conduct of examinations or investigations;
 5 (2) enter into agreements or relationships with other
 6 government officials or regulatory associations to improve
 7 efficiencies and reduce regulatory burden by sharing:

8 (A) resources;

9 (B) standardized or uniform methods or procedures; and

10 (C) documents, records, information, or evidence obtained
 11 under this section;

12 (3) use, hire, contract, or employ public or privately available
 13 analytical systems, methods, or software to examine or
 14 investigate a licensee; and

15 (4) accept and rely on examination or investigation reports
 16 made by other government officials within or outside Indiana.

17 Sec. 5. It is a violation of this article for a licensee to:

18 (1) directly or indirectly, employ any scheme, device, or
 19 artifice to defraud or mislead borrowers or lenders or to
 20 defraud any person;

21 (2) engage in any unfair or deceptive practice toward any
 22 person;

23 (3) obtain property by fraud or misrepresentation;

24 (4) solicit or enter into a contract with a borrower that
 25 provides in substance that the licensee may earn a fee or
 26 commission through "best efforts" to obtain a loan even
 27 though no loan is actually obtained for the borrower;

28 (5) solicit, advertise, or enter into a contract for specific
 29 interest rates, points, or other financing terms unless the
 30 terms are actually available at the time of soliciting,
 31 advertising, or contracting;

32 (6) conduct any business covered by this article without
 33 holding a valid license as required under this article, or assist
 34 or aid and abet any person in the conduct of business under
 35 this article without a valid license as required under this
 36 article;

37 (7) fail to make disclosures as required by this article or
 38 regulation adopted under this article and any other applicable
 39 state or federal law or regulation;

40 (8) fail to comply with this article or rules or guidance
 41 adopted under this article, or fail to comply with any other
 42 state or federal law, rule, or regulation, applicable to any

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business authorized or conducted under this article;

(9) make, in any manner, a false or deceptive statement or representation, with regard to the rates, points, or other financing terms or conditions for a mortgage transaction, or engage in bait and switch advertising;

(10) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;

(11) make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a mortgage transaction, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this article;

(13) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(14) fail to account truthfully for money belonging to a party to a mortgage transaction; or

(15) knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information subject to examination under this article.

Sec. 6. Except as otherwise provided, IC 4-21.5-3 governs any action taken by the department under this article. IC 4-22-2 applies to the adoption of rules by the department under this article. All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County, Indiana. However, if the department determines that an emergency exists, the department may adopt any rules authorized by this article under IC 4-22-2-37.1.

Sec. 7. (a) After notice and hearing, the department may order a mortgage loan originator or a person acting on behalf of the mortgage loan originator to cease and desist from engaging in violations of this article. In any civil court with jurisdiction:

(1) a respondent aggrieved by an order of the department may obtain judicial review of the order; and

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(2) the department may obtain an order of the court for the enforcement of the department's order.

A proceeding for review or enforcement under this subsection must be initiated by the filing of a petition in the court. Copies of the petition shall be served upon all parties of record.

(b) Not later than thirty (30) days after service of a petition for review upon the department under subsection (a), or within such further time as the court allows, the department shall transmit to the court the original or a certified copy of the entire record upon which the order that is the subject of the review is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After conducting a hearing on the matter, the court may:

(1) reverse or modify the order if the findings of fact of the department are clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record;

(2) grant any temporary relief or restraining order the court considers just and enter an order:

(A) enforcing;

(B) modifying;

(C) enforcing as modified; or

(D) setting aside;

in whole or in part, the order of the department; or

(3) enter an order remanding the case to the department for further proceedings.

(c) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of:

(1) adducing additional specified and material evidence; and

(2) seeking a finding upon the evidence;

upon good cause shown for the failure to previously adduce the evidence before the department.

(d) The jurisdiction of the court is exclusive and the court's final judgment or decree is subject to review on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(e) A proceeding for review under this section must be initiated not later than thirty (30) days after a copy of the order of the

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department is received. If a proceeding is not initiated within the time set forth in this subsection, the department may obtain a decree of a civil court with jurisdiction for enforcement of the department's order upon a showing that:

- (1) the order was issued in compliance with this section;
- (2) a proceeding for review was not initiated within the thirty (30) day period prescribed by this subsection; and
- (3) the respondent is subject to the jurisdiction of the court.

(f) With respect to an unconscionable agreement or fraudulent or unconscionable conduct by a respondent, the department may not issue an order under this section but may bring a civil action for an injunction under section 9 of this chapter.

Sec. 8. If it is claimed that a person has engaged in conduct subject to an order by:

- (1) the department under section 7(a) of this chapter; or
- (2) a court under sections 9 through 11 of this chapter;

the department may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with the terms of the assurance, the assurance is evidence that before the assurance was issued the person engaged in the conduct described in the assurance.

Sec. 9. The department may bring a civil action to restrain a person from violating this article or other state or federal law, rule, or regulation and for other appropriate relief.

Sec. 10. (a) As used in this section, "deceptive act" means an act or a practice in which a person knowingly or intentionally:

- (1) makes a material misrepresentation concerning;
- (2) conceals material information regarding the terms or conditions of;

a mortgage transaction.

(b) For purposes of this section, "knowingly" means having actual knowledge at the time of the transaction.

(c) The department may bring a civil action to enjoin a deceptive act performed in connection with a mortgage transaction.

Sec. 11. With respect to an action brought under:

- (1) section 9 of this chapter to enjoin a violation of this article;
- or
- (2) section 10 of this chapter to enjoin a deceptive act;

the department may apply to the court for appropriate temporary relief against a respondent, pending final determination of the

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proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in the conduct sought to be restrained, the court may grant any temporary relief or restraining order the court considers appropriate.

Sec. 12. (a) The department may bring a civil action to recover a civil penalty against a mortgage loan originator who willfully violates this article. If the court finds that the mortgage loan originator engaged in a course of repeated and willful violations of this article, the court may assess a civil penalty of not more than five thousand dollars (\$5,000). A civil penalty may not be imposed under this subsection:

(1) for a violation of this article occurring more than two (2) years before the action is brought; or

(2) for making an unconscionable agreement or engaging in a course of fraudulent or unconscionable conduct.

(b) If the department determines, after notice and an opportunity to be heard, that a person has willfully violated this article, the department may, in addition to or instead of all other remedies available under this section, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) for each violation.

(c) If the department determines, after notice and opportunity to be heard, that a person has violated this article, the department may, in addition to or instead of all other remedies available under this section, order restitution against the person subject to this article for a violation of this article.

Sec. 13. The grant of powers to the department under this article does not affect remedies available to debtors under this article or under other principles of law or equity.

Sec. 14. The department may bring an action or a proceeding in a court in a county:

(1) in which an act on which the action or proceeding is based occurred;

(2) in which the respondent resides or transacts business; or

(3) in which the action or proceeding is otherwise authorized by rule or venue laws.

SECTION 5. IC 24-4.4-1-202, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 202. This article does not apply to the following:

(1) Extensions of credit to government or governmental agencies or instrumentalities.

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(2) A first lien mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.

(3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.

(4) **Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5),** a first lien mortgage transaction made:

(a) in compliance with the requirements of; and

(b) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from; the Indiana housing and community development authority established by IC 5-20-1-3.

~~(5) A supervised financial organization:~~

~~(6) An operating subsidiary that is majority owned; directly or indirectly, by a supervised financial organization to the extent the operating subsidiary is regulated by the chartering authority of the supervised financial organization:~~

(5) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage transaction made by an entity using funds provided by the United States Department of Housing and Urban Development under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq.).

(6) An extension of credit originated by:

(a) a depository institution;

(b) subsidiaries that are:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal banking agency; or

(c) an institution regulated by the Farm Credit Administration.

(7) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a credit union service organization that is majority owned, directly or indirectly, by one (1) or more credit unions.

(8) A first lien mortgage transaction originated by a registered mortgage loan originator, when acting for an entity described in subdivision (6). However, a privately insured state chartered credit union shall comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under

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Section 1507 of the Safe and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE).

(9) An individual who offers or negotiates terms of a mortgage transaction with or on behalf of an immediate family member of the individual.

(10) An individual who offers or negotiates terms of a mortgage transaction secured by a dwelling that served as the individual's residence.

(11) Unless the attorney is compensated by:

(a) a lender;

(b) a mortgage broker;

(c) an other mortgage loan originator; or

(d) any agent of the lender, mortgage broker, or other mortgage loan originator described in clauses (a) through (c);

a licensed attorney who negotiates the terms of a mortgage transaction on behalf of a client as an ancillary matter to the attorney's representation of the client.

~~(8)~~ (12) Agencies, instrumentalities, and government owned corporations of the United States, including United States government sponsored enterprises.

SECTION 6. IC 24-4.4-1-204 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 204. In the department's examination and regulatory activities related to licensees under this article, the department may cooperate with the Indiana securities commissioner in the regulation of entities who, in addition to business conducted under this article, also conduct a loan broker business consistent with IC 23-2-5.**

SECTION 7. IC 24-4.4-1-301, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 301. In addition to definitions appearing in subsequent chapters of this article, the following definitions apply throughout this article:**

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

(a) controls;

(b) is controlled by; or

(c) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as

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found in the parties' language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural products" includes agricultural, horticultural, viticultural, dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, any products raised or produced on farms, and any products processed or manufactured from products raised or produced on farms.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products.

(5) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

(a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;

(b) the buyer is a person other than an organization;

(c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;

(d) either the debt is payable in installments or a finance charge is made; and

(e) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars (\$50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

(†) (6) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(‡) (7) "Creditor" means a person:

(a) that ~~regularly~~ engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(b) to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

The term does not include a person described in subsection (†)(a) 31(a) in a tablefunded transaction. A creditor may be an individual, a limited liability company, a sole proprietorship, a partnership, a trust, a joint venture, a corporation, an

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unincorporated organization, or other form of entity, however organized.

~~(3)~~ **(8)** "Department" refers to the members of the department of financial institutions.

(9) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

~~(4)~~ **(10)** "Director" refers to the director of the department of financial institutions **or the director's designee.**

~~(5)~~ **(11)** "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (a) condominium unit;
- (b) cooperative unit;
- (c) mobile home; or
- (d) trailer;

that is used as a residence.

(12) "Employee" has the meaning set forth in IC 22-2-2-3.

(13) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

~~(6)~~ **(14)** "First lien mortgage transaction" means a loan **or consumer credit sale** in which a first **lien** mortgage, or a land contract which constitutes a first lien, is created or retained against land upon which there is **or will be** a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(15) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(16) "Individual" means a natural person.

(17) "Licensee" means a person licensed as a creditor under this article.

~~(7)~~ **(18)** "Loan" includes:

- (a) the creation of debt by:
 - (i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or
 - (ii) the extension of credit by a person who ~~regularly~~ engages as a seller in credit transactions primarily secured

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by an interest in land;

(b) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and

(c) the forbearance of debt arising from a loan.

(19) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subdivision, the term "clerical or support duties" may include, after the receipt of an application the following:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(20) "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain, engages in taking a mortgage transaction application or offering or negotiating terms of a mortgage transaction. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under this article.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) other mortgage loan originator; or

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(iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);

a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(21) "Mortgage transaction" means a loan or consumer credit sale in which a mortgage or a land contract is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(22) "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

(23) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(24) "Organization" means a corporation, a government or government subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

(25) "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(26) "Person" includes an individual or an organization.

(10) A person is "regularly engaged" as a creditor in first lien mortgage transactions in Indiana if:

(a) the person acted as a creditor in first lien mortgage transactions in Indiana more than five (5) times in the preceding calendar year; or

(b) the person did not meet the numerical standards set forth in subdivision (a) in the preceding calendar year, but has or will meet the numerical standards set forth in subdivision (a) in the current calendar year.

(27) "Principal" of a mortgage transaction means the total of:

(a) the net amount paid to, receivable by, or paid or

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payable for the account of the debtor; and

(b) to the extent that payment is deferred, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees if not included in clause (a).

(28) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(e) Offering to engage in any activity, or act in any capacity, described in this subdivision.

(29) "Registered mortgage loan originator" means any individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(b) is registered with, and maintains a unique identifier through, the NMLSR.

~~(+)~~ (30) "Revolving first lien mortgage transaction" means an arrangement between a creditor and a debtor in which:

(a) the creditor permits the debtor to obtain advances from time to time;

(b) the unpaid balances of principal, ~~credit service charges,~~ or ~~loan~~ finance charges, and other appropriate charges are debited to an account; and

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(c) the debtor has the privilege of paying the balances in installments.

(12) "Supervised financial organization" means a person that is:

(a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States that authorizes the person to make loans and to receive deposits, including deposits into a savings, share, certificate, or deposit account; and

(b) subject to supervision by an official or agency of a state or of the United States.

(13) (31) "Tablefunded" means a transaction in which:

(a) a person closes a first lien mortgage transaction in the person's own name as a mortgagee with funds provided by one

(1) or more other persons; and

(b) the transaction is assigned simultaneously to the mortgage creditor providing the funding not later than one (1) business day after the funding of the transaction.

(32) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

SECTION 8. IC 24-4.4-2-401, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 401. (1) Unless a person subject to this article has first obtained a license **under this article** from the department **and annually maintains the license**, the person shall not ~~regularly~~ engage in Indiana as a creditor in first lien mortgage transactions. ~~However, this article does not require an employee of a person that is licensed under this article to obtain a license to make a first lien mortgage loan.~~

(2) Each:

(a) licensed creditor; and

(b) entity exempt from licensing under this article that employs a licensed mortgage loan originator;

shall register with and maintain a valid unique identifier issued by the NMLSR. Each licensed mortgage loan originator must be employed by, and associated with, a licensed creditor, or an entity exempt from licensing under this article, in the NMLSR in order to originate loans.

(3) Applicants for a license must apply for a license under this article in a form prescribed by the director. Each form:

(a) must contain content as set forth by rule, instruction, or procedure of the director; and

(b) may be changed or updated as necessary by the director in order to carry out the purposes of this article.

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(4) To fulfill the purposes of this article, the director may establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to:

- (a) collect and maintain records; and
- (b) process transaction fees or other fees related to licensees or other persons subject to this article.

(5) For the purpose of participating in the NMLSR, the director may:

- (a) waive or modify, in whole or in part, by rule or order, any or all of the requirements of this article; and
- (b) establish new requirements as reasonably necessary to participate in the NMLSR.

SECTION 9. IC 24-4.4-2-402, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 402. (1) The department shall receive and act on all applications for licenses to engage in first lien mortgage transactions. Applications must be made as prescribed by the director.

(2) A license may not be issued unless the department finds that the **professional training and experience**, financial responsibility, character, and fitness of:

- (a) the applicant and any significant affiliate of the applicant;
- (b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and

(c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant; are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

- (a) the time of application;
- (b) the time of renewal of a license; or
- (c) any other time considered necessary by the director.

(4) Evidence of compliance with this section ~~may~~ **must** include:

- (a) criminal background checks, **as described in section 402.1 of this chapter**, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);
- (b) credit histories **as described in section 402.2 of this chapter**; ~~and~~
- (c) surety bond requirements as described in section 402.3 of

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1 **this chapter;**

2 **(d) a review of licensure actions in this and other states; and**

3 ~~(c)~~ **(e) other background checks considered necessary by the**
4 **director.**

5 If the director requests a national criminal history background check
6 under subdivision (a) for an individual described in subsection (2); the
7 director shall require the individual to submit fingerprints to the
8 department or to the state police department, as appropriate; at the time
9 evidence of compliance is requested under subsection (3): The
10 individual to whom the request is made shall pay any fees or costs
11 associated with the fingerprints and the national criminal history
12 background check. The national criminal history background check
13 may be used by the director to determine the individual's compliance
14 with this section. The director or the department may not release the
15 results of the national criminal history background check to any private
16 entity.

17 **(5) For purposes of this section and in order to reduce the points**
18 **of contact that the director may have to maintain for purposes of**
19 **this section, the director may use the NMLSR as a channeling**
20 **agent for requesting and distributing information to and from any**
21 **source so directed by the director.**

22 ~~(5)~~ **(6)** The department may deny an application under this section
23 if the director of the department determines that the application was
24 submitted for the benefit of, or on behalf of, a person who does not
25 qualify for a license.

26 ~~(6)~~ **(7)** Upon written request, the applicant is entitled to a hearing on
27 the question of the qualifications of the applicant for a license in the
28 manner provided in IC 4-21.5.

29 ~~(7)~~ **(8)** The applicant shall pay the following fees at the time
30 designated by the department:

31 (a) An initial license fee as established by the department under
32 IC 28-11-3-5.

33 (b) An annual renewal fee as established by the department under
34 IC 28-11-3-5.

35 (c) Examination fees as established by the department under
36 IC 28-11-3-5.

37 ~~(8)~~ **(9)** A fee as established by the department under IC 28-11-3-5
38 may be charged for each day ~~the annual renewal fee a fee~~ under
39 subsection ~~(7)(b)~~ **is 8(b) or 8(c) is delinquent.**

40 ~~(9)~~ **(10)** A license issued under this section is not assignable or
41 transferable.

42 ~~(10)~~ Subject to subsection ~~(11)~~, the director may designate an

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1 automated central licensing system and repository; operated by a third
2 party; to serve as the sole entity responsible for:

3 (a) processing applications and renewals for licenses under this
4 section; and

5 (b) performing other services that the director determines are
6 necessary for the orderly administration of the department's
7 licensing system under this article:

8 (11) The director's authority to designate an automated central
9 licensing system and repository under subsection (10) is subject to the
10 following:

11 (a) The director or the director's designee may not require any
12 person exempt from licensure under this article; or any employee
13 or agent of an exempt person; to:

14 (i) submit information to; or

15 (ii) participate in;

16 the automated central licensing system and repository:

17 (b) Information stored in the automated central licensing system
18 and repository is subject to the confidentiality provisions of
19 IC 28-1-2-30 and IC 5-14-3: A person may not:

20 (i) obtain information from the automated central licensing
21 system and repository; unless the person is authorized to do so
22 by statute;

23 (ii) initiate any civil action based on information obtained
24 from the automated central licensing system if the information
25 is not otherwise available to the person under any other state
26 law; or

27 (iii) initiate any civil action based on information obtained
28 from the automated central licensing system if the person
29 could not have initiated the action based on information
30 otherwise available to the person under any other state law:

31 (c) Documents, materials; and other forms of information in the
32 control or possession of the automated central licensing system
33 and repository that are confidential under IC 28-1-2-30 and that
34 are:

35 (i) furnished by the director; the director's designee; or a
36 licensee; or

37 (ii) otherwise obtained by the automated central licensing
38 system and repository;

39 are confidential and privileged by law and are not subject to
40 inspection under IC 5-14-3; subject to subpoena; subject to
41 discovery; or admissible in evidence in any civil action: However,
42 the director or the director's designee may use the documents;

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materials, or other information available to the director or the director's designee in furtherance of any action brought in connection with the director's duties under this article.

(d) Disclosure of documents, materials, and information:

(i) to the director or the director's designee; or

(ii) by the director or the director's designee;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(e) Information provided to the automated central licensing system and repository is subject to IC 4-1-11.

(f) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding; or

(iii) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

(g) The director may require a licensee required to submit information to the automated central licensing system and repository to pay a processing fee considered reasonable by the director.

SECTION 10. IC 24-4.4-2-402.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 402.1. (1) When the director requests a national criminal history background check under section 402(4)(a) of this chapter for an individual described in section 402(2) of this chapter, the director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested under section 402(3) of this chapter. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.**

(2) For purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting information from

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1 and distributing information to the United States Department of
2 Justice or any governmental agency.

3 SECTION 11. IC 24-4.4-2-402.2 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2009]: Sec. 402.2. (1) If the director requests
6 a credit report for an individual described in section 402(2) of this
7 chapter, the individual to whom the request is made shall pay any
8 fees or costs associated with procuring the report.

9 (2) The individual must submit personal history and experience
10 information in a form prescribed by the NMLSR, including the
11 submission of authorization for the NMLSR or the director to
12 obtain an independent credit report obtained from a consumer
13 reporting agency described in Section 603(p) of the Fair Credit
14 Reporting Act (15 U.S.C. 1681a(p)).

15 (3) The director may consider one (1) or more of the following
16 when determining if an individual has demonstrated financial
17 responsibility:

- 18 (a) Bankruptcies filed within the last ten (10) years.
- 19 (b) Current outstanding judgments, except judgments solely
- 20 as a result of medical expenses.
- 21 (c) Current outstanding tax liens or other government liens or
- 22 filings.
- 23 (d) Foreclosures within the past three (3) years.
- 24 (e) A pattern of serious delinquent accounts within the past
- 25 three (3) years.

26 SECTION 12. IC 24-4.4-2-402.3 IS ADDED TO THE INDIANA
27 CODE AS A NEW SECTION TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2009]: Sec. 402.3. (1) Each:

- 29 (a) creditor; and
- 30 (b) entity exempt from licensing under this article that
- 31 employs a licensed mortgage loan originator;

32 must be covered by a surety bond in accordance with this section.

33 (2) A surety bond:

- 34 (a) must provide coverage for each creditor and each entity
- 35 exempt from licensing under this article that employs a
- 36 mortgage loan originator in an amount as prescribed in
- 37 subsection (4); and
- 38 (b) must be in a form prescribed by the director.

39 (3) The director may adopt rules or guidance documents with
40 respect to the requirements for a surety bond as necessary to
41 accomplish the purposes of this article.

42 (4) The penal sum of the surety bond shall be maintained in an

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amount that reflects the dollar amount of mortgage transactions originated as determined by the director.

(5) If an action is commenced on the surety bond of a creditor or an entity exempt from licensing under this article as described in subsection (1), the director may require the filing of a new bond.

(6) A creditor or an entity exempt from licensing under this article as described in subsection (1) shall file a new surety bond immediately upon recovery of any action on the surety bond required under this section.

SECTION 13. IC 24-4.4-2-402.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 402.4. (1) Subject to subsection (6), the director shall designate the NMLSR to serve as the sole entity responsible for:

(a) processing applications and renewals for licenses under this article;

(b) issuing unique identifiers for licensees and entities exempt from licensing under this article that employ a licensed mortgage loan originator under this article; and

(c) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this article.

(2) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director shall regularly report significant or recurring violations of this article to the NMLSR.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report complaints received regarding licensees under this article to the NMLSR.

(4) The director may report publicly adjudicated licensure actions against a licensee to the NMLSR.

(5) The director shall establish a process in which licensees may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under subsection (1) is subject to the following:

(a) Except with respect to a privately insured state chartered credit union and entities exempt from licensing under this article that employ licensed mortgage loan originators, the director or the director's designee may not require any person exempt from licensure under this article, or any employee or agent of an exempt person, to:

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1 (i) submit information to; or

2 (ii) participate in;

3 the NMLSR.

4 (b) Information stored in the NMLSR is subject to the
5 confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A
6 person may not:

7 (i) obtain information from the NMLSR, unless the person
8 is authorized to do so by statute;

9 (ii) initiate any civil action based on information obtained
10 from the NMLSR if the information is not otherwise
11 available to the person under any other state law; or

12 (iii) initiate any civil action based on information obtained
13 from the NMLSR if the person could not have initiated the
14 action based on information otherwise available to the
15 person under any other state law.

16 (c) Documents, materials, and other forms of information in
17 the control or possession of the NMLSR that are confidential
18 under IC 28-1-2-30 and that are:

19 (i) furnished by the director, the director's designee, or a
20 licensee; or

21 (ii) otherwise obtained by the NMLSR;

22 are confidential and privileged by law and are not subject to
23 inspection under IC 5-14-3, subject to subpoena, subject to
24 discovery, or admissible in evidence in any civil action.
25 However, the director may use the documents, materials, or
26 other information available to the director in furtherance of
27 any action brought in connection with the director's duties
28 under this article.

29 (d) Disclosure of documents, materials, and information:

30 (i) to the director; or

31 (ii) by the director;

32 under this subsection does not result in a waiver of any
33 applicable privilege or claim of confidentiality with respect to
34 the documents, materials, or information.

35 (e) Information provided to the NMLSR is subject to
36 IC 4-1-11.

37 (f) This subsection does not limit or impair a person's right to:

38 (i) obtain information;

39 (ii) use information as evidence in a civil action or
40 proceeding; or

41 (iii) use information to initiate a civil action or proceeding;
42 if the information may be obtained from the director or the

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1 director's designee under any law.

2 (g) Except as otherwise provided in Public Law 110-289,
3 Section 1512, the requirements under any federal law or
4 IC 5-14-3 regarding the privacy or confidentiality of any
5 information or material provided to the NMLSR, and any
6 privilege arising under federal or state law, including the
7 rules of any federal or state court, with respect to the
8 information or material, continue to apply to the information
9 or material after the information or material has been
10 disclosed to the NMLSR. The information and material may
11 be shared with all state and federal regulatory officials with
12 mortgage industry oversight authority without the loss of
13 privilege or the loss of confidentiality protections provided by
14 federal law or IC 5-14-3.

15 (h) For purposes of this section, the director may enter
16 agreements or sharing arrangements with other governmental
17 agencies, the Conference of State Bank Supervisors, the
18 American Association of Residential Mortgage Regulators, or
19 other associations representing governmental agencies as
20 established by rule or order of the director.

21 (i) Information or material that is subject to a privilege or
22 confidentiality under subdivision (g) is not subject to:

23 (i) disclosure under any federal or state law governing the
24 disclosure to the public of information held by an officer or
25 an agency of the federal government or the respective
26 state; or

27 (ii) subpoena, discovery, or admission into evidence in any
28 private civil action or administrative process, unless with
29 respect to any privilege held by the NMLSR with respect
30 to the information or material, the person to whom the
31 information or material pertains waives, in whole or in
32 part, in the discretion of the person, that privilege.

33 (j) IC 5-14-3 relating to the disclosure of confidential
34 supervisory information or any information or material
35 described in subdivision (g) that is inconsistent with
36 subdivision (g) is superseded by this section.

37 (k) This section does not apply with respect to the information
38 or material relating to the employment history of, and
39 publicly adjudicated disciplinary and enforcement actions
40 against, a person described in section 402(2) of this chapter
41 that are included in the NMLSR for access by the public.

42 (l) The director may require a licensee required to submit

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information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether a NMLSR processing fee is reasonable, the director shall:

(i) require review of; and

(ii) make available;

the audited financial statements of the NMLSR.

SECTION 14. IC 24-4.4-2-403, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 403. (1) The minimum standards for license renewal for a creditor include the following:

(a) The creditor has continued to meet the surety bond requirement under section 402.3 of this chapter.

(b) The creditor has filed the creditor's annual call report in a manner that satisfies section 405(4) of this chapter.

(c) The creditor has paid all required fees for renewal of the license.

(d) The creditor and individuals described in section 402(2) of this chapter continue to meet all the standards for licensing contained in section 402 of this chapter.

(2) A license issued by the department authorizing a person to engage in first lien mortgage transactions as a creditor under this article may be revoked or suspended by the department if the person fails to:

(a) file any renewal form required by the department; or

(b) pay any license renewal fee described under section 402 of this chapter;

not later than sixty (60) days after the due date.

(3) A person whose license is revoked or suspended under this section may do either of the following:

(a) Pay all delinquent fees and apply for a new reinstatement of the license.

(b) Appeal the revocation or suspension to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation or suspension, the license remains in force.

SECTION 15. IC 24-4.4-2-404, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 404. (1) The department may issue to a person licensed to engage in first lien mortgage transactions as a creditor an order to show cause why the person's license should not be revoked or suspended for a period determined by the department. The order must state the place and time for a meeting with the department that is not

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less than ten (10) days from the date of the order. After the meeting, the department shall revoke or suspend the license if the department finds that:

(a) the licensee has repeatedly and willfully violated:

(i) this article or any rule, ~~or~~ order, **or guidance document** lawfully adopted or issued under this article; or

(ii) any other state or federal law, regulation, or rule applicable to first lien mortgage transactions; ~~or~~

(b) the licensee does not meet the licensing qualifications contained in section 402 of this chapter; or

~~(b)~~ (c) facts or conditions exist which would clearly have justified the department in refusing to grant a license had the facts or conditions been known to exist at the time the application for the license was made.

(2) Except as provided in section 403 of this chapter, a revocation or suspension of a license is not authorized under this article unless before instituting proceedings to suspend or revoke the license, the department gives notice to the licensee of the conduct or facts that warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(3) If the department finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, the department may, after a hearing with the licensee upon five (5) days written notice to the licensee, enter an order suspending the license for not more than thirty (30) days.

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of the revocation or suspension. Not later than five (5) days after the entry of the order the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to engage in first lien mortgage transactions **as a creditor** may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this paragraph does not affect the person's liability for acts previously committed and coming within the scope of this article.

(6) If the director determines it to be in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (5).

~~(6)~~ (7) A revocation, suspension, or relinquishment of a license does

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not impair or affect the obligation of any preexisting lawful contract between:

- (a) the person whose license has been revoked, suspended, or relinquished; and
- (b) any debtor.

~~(7)~~ (8) The department may reinstate a license **or** terminate a suspension **or grant of a new** license to a person whose license has been revoked or suspended if the director determines that, at the time the determination is made, there is no fact or condition that exists that clearly would justify the department in refusing to **grant reinstate** a license.

~~(8)~~ (9) If the director:

- (a) has just cause to believe an emergency exists from which it is necessary to protect the interests of the public; or
 - (b) determines that a license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;
- the director may proceed with the revocation of the license under IC 4-21.5-3-6.

SECTION 16. IC 24-4.4-2-405, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 405. (1) Every licensee shall maintain records in a manner that will enable the department to determine whether the licensee is complying with this article. The record keeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever the records are located. Records concerning any first lien mortgage transaction shall be retained for two (2) years after the making of the final entry relating to the transaction, but in the case of a revolving first lien mortgage transaction, the two (2) years required under this subsection is measured from the date of each entry relating to the transaction.

(2) ~~A licensee~~ **The unique identifier of any person originating a mortgage transaction must be clearly shown on all mortgage transaction application forms and any other documents as required by the director.**

(3) Every licensee shall use automated examination and regulatory software designated by the director, including third party software. Use of the software consistent with guidance and policies issued by the director is not a violation of IC 28-1-2-30.

(4) Each:

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1 (a) creditor licensed by the department under this article; and
 2 (b) entity exempt from licensing under this article that
 3 employs a licensed mortgage originator;
 4 shall submit to the NMLSR reports of condition, which must be in
 5 a form and must contain information as required by the NMLSR.

6 (5) Each:

7 (a) creditor licensed by the department under this article; and
 8 (b) entity exempt from licensing under this article that
 9 employs licensed mortgage loan originators;

10 shall file with the department **additional** financial statements relating
 11 to all first lien mortgage transactions originated by the ~~licensee~~. ~~The~~
 12 ~~licensee shall file the financial statements~~ **licensed creditor or the**
 13 **exempt entity described in subdivision (2)** as required by the
 14 department, but not more frequently than annually, in the form
 15 prescribed by the department.

16 ~~(3)~~ (6) A ~~licensee~~ **licensed creditor** shall file notification with the
 17 department if the licensee:

18 (a) has a change in name, address, or any of its principals;
 19 (b) opens a new branch, closes an existing branch, or relocates an
 20 existing branch;
 21 (c) files for bankruptcy or reorganization; or
 22 (d) is subject to revocation or suspension proceedings by a state
 23 or governmental authority with regard to the ~~licensee's~~ **licensed**
 24 **creditor's** activities;

25 not later than thirty (30) days after the date of the event described in
 26 this subsection.

27 ~~(4)~~ (7) A licensee shall file notification with the department if ~~the~~
 28 ~~licensee or~~ a key officer or director of the licensee

29 (a) is under indictment for a felony involving fraud, deceit, or
 30 misrepresentation under the laws of Indiana or any other
 31 jurisdiction; or

32 ~~(b)~~ has been convicted of or pleaded guilty or nolo contendere to
 33 a felony involving fraud, deceit, or misrepresentation under the
 34 laws of Indiana or any other jurisdiction

35 not later than thirty (30) days after the date of the event described in
 36 this subsection.

37 SECTION 17. IC 24-4.4-3-102, AS ADDED BY P.L.145-2008,
 38 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2009]: Sec. 102. This chapter applies to a person that
 40 **regularly** engages as a creditor in first lien mortgage transactions in
 41 Indiana. **The authority of this chapter remains in effect, whether a**
 42 **licensee, individual, or person subject to this article acts or claims**

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1 to act under any licensing or registration law of Indiana or claims
2 to act without such authority.

3 SECTION 18. IC 24-4.4-3-104.5 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2009]: **Sec. 104.5.** To carry out the purposes
6 of this section, the director may:

7 (a) retain attorneys, accountants, or other professionals and
8 specialists as examiners, auditors, or investigators to conduct
9 or assist in the conduct of examinations or investigations;

10 (b) enter into agreements or relationships with other
11 government officials or regulatory associations in order to
12 improve efficiencies and reduce regulatory burden by
13 sharing:

14 (i) resources;

15 (ii) standardized or uniform methods or procedures; and

16 (iii) documents, records, information, or evidence obtained
17 under this section;

18 (c) use, hire, contract, or employ public or privately available
19 analytical systems, methods, or software to examine or
20 investigate a licensee, an individual, or a person subject to this
21 article;

22 (d) accept and rely on examination or investigation reports
23 made by other government officials within or outside Indiana;
24 and

25 (e) accept audit reports made by an independent certified
26 public accountant for the licensee, individual, or person
27 subject to this article in the course of that part of the
28 examination covering the same general subject matter as the
29 audit and may incorporate the audit report in the report of
30 the examination, report of investigation, or other writing of
31 the director.

32 SECTION 19. IC 24-4.4-3-104.6 IS ADDED TO THE INDIANA
33 CODE AS A NEW SECTION TO READ AS FOLLOWS
34 [EFFECTIVE JULY 1, 2009]: **Sec. 104.6.** It is a violation of this
35 article for a person or individual subject to this article to:

36 (a) directly or indirectly employ any scheme, device, or
37 artifice to defraud or mislead borrowers or lenders or to
38 defraud any person;

39 (b) engage in any unfair or deceptive practice toward any
40 person;

41 (c) obtain property by fraud or misrepresentation;

42 (d) solicit or enter into a contract with a borrower that

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provides in substance that the person or individual subject to this article may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(e) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(f) conduct any business covered by this article without holding a valid license as required under this article, or assist or aid and abet any person in the conduct of business under this article without a valid license as required under this article;

(g) fail to make disclosures as required by this article or regulation adopted under this article and any other applicable state or federal law regulation;

(h) fail to comply with this article or rules adopted under this article, or fail to comply with any other state or federal law, rule, or regulation, applicable to any business authorized or conducted under this article;

(i) make, in any manner, any false or deceptive statement or representation, with regard to the rates, points, or other financing terms or conditions for a mortgage transaction, or engage in bait and switch advertising;

(j) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;

(k) make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a mortgage transaction, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(l) collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this article;

(m) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

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1 (n) fail to account truthfully for money belonging to a party
 2 to a mortgage transaction; or
 3 (o) knowingly withhold, abstract, remove, mutilate, destroy,
 4 or secrete any books, records, computer records, or other
 5 information subject to examination under this article.

6 SECTION 20. IC 24-4.4-3-105, AS ADDED BY P.L.145-2008,
 7 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2009]: Sec. 105. Except as otherwise provided, IC 4-21.5-3
 9 governs any action taken by the department under this chapter or
 10 IC 24-4.4-2-401 through IC 24-4.4-2-405. IC 4-22-2 applies to the
 11 adoption of rules by the department under this article. **All proceedings**
 12 **for administrative review under IC 4-21.5-3 or judicial review**
 13 **under IC 4-21.5-5 shall be held in Marion County, Indiana.**
 14 However, if the department determines that an emergency exists, the
 15 department may adopt any rules authorized by this article under
 16 IC 4-22-2-37.1.

17 SECTION 21. IC 24-4.4-3-106, AS ADDED BY P.L.145-2008,
 18 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2009]: Sec. 106. (1) After notice and hearing, the department
 20 may order a creditor or a person acting on ~~the creditor's behalf~~ **behalf**
 21 **of the creditor** to cease and desist from engaging in violations of this
 22 article. In any civil court with jurisdiction:

23 (a) a respondent aggrieved by an order of the department may
 24 obtain judicial review of the order; and

25 (b) the department may obtain an order of the court for the
 26 enforcement of the department's order.

27 A proceeding for review or enforcement under this subsection shall be
 28 initiated by the filing of a petition in the court. Copies of the petition
 29 shall be served upon all parties of record.

30 (2) Not later than thirty (30) days after service of a petition for
 31 review upon the department under subsection (1), or within such
 32 further time as the court may allow, the department shall transmit to the
 33 court the original or a certified copy of the entire record upon which the
 34 order that is the subject of the review is based, including any transcript
 35 of testimony, which need not be printed. By stipulation of all parties to
 36 the review proceeding, the record may be shortened. After conducting
 37 a hearing on the matter, the court may:

38 (a) reverse or modify the order if the findings of fact of the
 39 department are clearly erroneous in view of the reliable,
 40 probative, and substantial evidence in the whole record;

41 (b) grant any temporary relief or restraining order the court
 42 considers just; and

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(c) enter an order:

(i) enforcing;

(ii) modifying;

(iii) enforcing as modified; or

(iv) setting aside;

in whole or in part, the order of the department; or

(d) enter an order remanding the case to the department for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of:

(a) adducing additional specified and material evidence; and

(b) seeking a finding upon such evidence;

upon good cause shown for the failure to previously adduce this evidence before the department.

(4) The jurisdiction of the court is exclusive and the court's final judgment or decree is subject to review on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated not later than thirty (30) days after a copy of the order of the department is received. If a proceeding is not initiated within the time set forth in this subsection, the department may obtain a decree of a civil court with jurisdiction for enforcement of the department's order upon a showing that:

(a) the order was issued in compliance with this section;

(b) a proceeding for review was not initiated within the thirty (30) day period prescribed by this subsection; and

(c) the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by a respondent, the department may not issue an order under this section but may bring a civil action for an injunction under section 111 of this chapter.

SECTION 22. IC 24-4.4-3-108, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 108. The department may bring a civil action to restrain a person from violating this article **or other state or federal law, rule, or regulation** and for other appropriate relief.

SECTION 23. IC 24-4.4-3-111, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2009]: Sec. 111. (1) The department may bring a civil action against a creditor or a person acting on ~~the creditor's~~ behalf of ~~the creditor~~ to recover a civil penalty for willfully violating this article. If the court finds that the defendant has engaged in a course of repeated and willful violations of this article, the court may assess a civil penalty of not more than five thousand dollars (\$5,000). A civil penalty may not be imposed under this subsection:

(a) for violations of this article occurring more than two (2) years before the action is brought; or

(b) for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

(2) If the department determines, after notice and ~~an~~ opportunity ~~for hearing, to be heard,~~ that a person has violated this article, the department may, in addition to or instead of all other remedies available under this section, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation.

(3) If the department determines, after notice and opportunity to be heard, that a person has willfully violated this article, the department may, in addition to or instead of all other remedies available under this section, order restitution against the person subject to this article for a violation of this article.

SECTION 24. IC 24-4.5-1-102, AS AMENDED BY P.L.90-2008, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 102. ~~Purposes; Rules of Construction~~ — (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

(a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;

(b) to provide rate ceilings to assure an adequate supply of credit to consumers;

(c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) to permit and encourage the development of fair and economically sound consumer credit practices;

(f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and

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(g) to make uniform the law including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this article includes reference to a related rule **or guidance** of the department adopted pursuant to this article.

~~(4)~~ (4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, ~~2007~~: **2008**.

(5) The authority of this article remains in effect, whether a licensee, an individual, or a person subject to this article acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

~~(5)~~ (6) This article applies to a transaction if the director determines that the transaction:

(a) is in substance a disguised consumer credit transaction; or

(b) involves the application of subterfuge for the purpose of avoiding this article.

A determination by the director under this paragraph must be in writing and shall be delivered to all parties to the transaction. IC 4-21.5-3 applies to a determination made under this paragraph.

SECTION 25. IC 24-4.5-1-108 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 108. ~~Effect of Article on Powers of Organizations~~ = (1) This article prescribes maximum charges for all creditors, except lessors and those excluded (IC 24-4.5-1-202), extending consumer credit, including consumer credit sales (IC 24-4.5-2-104), consumer loans (~~IC 24-4.5-3-104~~), **(IC 24-4.5-1-301.5(9))**, and consumer related sales and loans (IC 24-4.5-2-602 and IC 24-4.5-3-602), and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial loan and investment companies, and commercial banks and trust companies, this article displaces existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in subsection (1) and IC 24-4.6-1, this article does not displace limitations on powers of credit unions, savings banks, savings or building and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2), this article does not displace:

(a) limitations on powers of ~~supervised financial organizations~~

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~~(IC 24-4.5-1-301)~~ **depository institutions (IC 24-4.5-1-301.5)**

with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan ~~secured by an interest in land~~, **that is a mortgage transaction**, or other similar restrictions designed to protect deposits; or

(b) limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

SECTION 26. IC 24-4.5-1-109 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 109. All persons licensed on October 1, 1971, under:

- (1) IC 24-5-4 (before its repeal on October 1, 1971);
- (2) IC 28-7-4 (before its repeal on October 1, 1971);
- (3) IC 28-7-2 (before its repeal on October 1, 1971); **or**
- (4) IC 28-5-1-4;

are licensed to make supervised loans under this article, **subject to the renewal provisions contained in this article**. All provisions of this article apply to the persons previously licensed or authorized. The department may deliver evidence of licensing to the persons previously licensed or authorized.

SECTION 27. IC 24-4.5-1-202, AS AMENDED BY P.L.181-2006, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 202. This article does not apply to the following:

- (1) Extensions of credit to government or governmental agencies or instrumentalities.
- (2) The sale of insurance by an insurer, except as otherwise provided in the chapter on insurance (IC 24-4.5-4).
- (3) Transactions under public utility, municipal utility, or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.
- (4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.
- (5) A sale of goods, services, or an interest in land in which the goods, services, or interest in land are purchased primarily for a purpose other than a personal, family, or household purpose.
- (6) A loan in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
- (7) An extension of credit primarily for a business, a commercial, or an agricultural purpose.
- (8) An installment agreement for the purchase of home fuels in

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which a finance charge is not imposed.

(9) Loans made, insured, or guaranteed under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(10) Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(11) **Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5),** a loan made:

(A) in compliance with the requirements of; and

(B) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from;

the Indiana housing and community development authority established by IC 5-20-1-3.

(12) **Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien mortgage transaction made by an entity using funds provided by the United States Department of Housing and Urban Development under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq).**

SECTION 28. IC 24-4.5-1-204 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 204. In an examination and regulatory activities by the department related to licensees under this article, the department may cooperate with the Indiana securities commissioner in the regulation of individuals who, in addition to business conducted under this article, also conduct a loan broker business consistent with the IC 23-2-5.**

SECTION 29. IC 24-4.5-1-301.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 301.5. In addition to definitions appearing in subsequent chapters in this article:**

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

(a) controls;

(b) is controlled by; or

(c) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as

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found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(4) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(5) "Closing costs" with respect to a subordinate lien mortgage transaction includes:

- (a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) fees for credit reports.

(6) "Conspicuous" refers to a term or clause when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(7) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(8) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

- (a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;
- (b) the buyer is a person other than an organization;
- (c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
- (d) either the debt is payable in installments or a finance charge is made; and
- (e) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars

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1 (\$50,000) or the debt is secured by personal property used or
 2 expected to be used as the principal dwelling of the buyer.

3 Unless the sale is made subject to this article by agreement
 4 (IC 24-4.5-2-601), "consumer credit sale" does not include a sale in
 5 which the seller allows the buyer to purchase goods or services
 6 pursuant to a lender credit card or similar arrangement or except
 7 as provided with respect to disclosure (IC 24-4.5-2-301), debtors'
 8 remedies (IC 24-4.5-5-201), providing payoff amounts
 9 (IC 24-4.5-2-209), and powers and functions of the department
 10 (IC 24-4.5-6-101), a sale of an interest in land which is a first lien
 11 mortgage transaction.

12 (9) "Consumer loan" means a loan made by a person regularly
 13 engaged in the business of making loans in which:

- 14 (a) the debtor is a person other than an organization;
- 15 (b) the debt is primarily for a personal, family, or household
- 16 purpose;
- 17 (c) either the debt is payable in installments or a loan finance
- 18 charge is made; and
- 19 (d) either:
 - 20 (i) the principal does not exceed fifty thousand dollars
 - 21 (\$50,000); or
 - 22 (ii) the debt is secured by an interest in land or by personal
 - 23 property used or expected to be used as the principal
 - 24 dwelling of the debtor.

25 Except as described in IC 24-4.5-3-105 of this chapter, the term
 26 does not include a first lien mortgage transaction.

27 (10) "Credit" means the right granted by a creditor to a debtor
 28 to defer payment of debt or to incur debt and defer its payment.

29 (11) "Creditor" means a person:

- 30 (a) who regularly engages in the extension of consumer credit
- 31 that is subject to a credit service charge or loan finance
- 32 charge, as applicable, or is payable by written agreement in
- 33 more than four (4) installments (not including a down
- 34 payment); and
- 35 (b) to whom the obligation is initially payable, either on the
- 36 face of the note or contract, or by agreement when there is not
- 37 a note or contract.

38 (12) "Depository institution" has the meaning set forth in the
 39 Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any
 40 credit union.

41 (13) "Director" means the director of the department of
 42 financial institutions or the director's designee.

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(14) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (a) condominium unit;
- (b) cooperative unit;
- (c) mobile home; or
- (d) trailer;

that is used as a residence.

(15) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(16) "Employee" has the meaning set forth in IC 22-2-2-3.

(17) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(18) "First lien mortgage transaction" means a loan or consumer credit sale in which a first lien mortgage, or a land contract which constitutes a first lien, is created or retained against land upon which there is or will be a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(19) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(20) "Individual" means a natural person.

(21) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

- (a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
- (b) by the lender's payment or agreement to pay the debtor's obligations; or
- (c) by the lender's purchase from the obligee of the debtor's obligations.

(22) "Licensee" means a person licensed as a creditor under this article.

(23) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction

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of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subsection, the term "clerical or support duties" may include, after the receipt of an application, the following:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities, shall not represent to the public through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(24) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, engages in taking a mortgage transaction application or offers to negotiate terms of a mortgage transaction. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under this article.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) other mortgage loan originator; or

(iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);

a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(25) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been

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1 instructed by a mortgagee to send payments on a loan secured by
2 a mortgage.

3 (26) "Mortgage transaction" means a loan or consumer credit
4 sale in which a mortgage or land contract is created or retained
5 against land upon which there is or will be a dwelling that is or will
6 be used by the debtor primarily for personal, family, or household
7 purposes.

8 (27) "Nationwide Mortgage Licensing System and Registry" or
9 "NMLSR" means a mortgage licensing system developed and
10 maintained by the Conference of State Bank Supervisors and the
11 American Association of Residential Mortgage Regulators for the
12 licensing and registration of creditors and mortgage loan
13 originators.

14 (28) "Nontraditional mortgage product" means any mortgage
15 product other than a thirty (30) year fixed rate mortgage.

16 (29) "Official fees" means:

17 (a) fees and charges prescribed by law which actually are or
18 will be paid to public officials for determining the existence of
19 or for perfecting, releasing, or satisfying a security interest
20 related to a consumer credit sale, consumer lease, or
21 consumer loan; or

22 (b) premiums payable for insurance in lieu of perfecting a
23 security interest otherwise required by the creditor in
24 connection with the sale, lease, or loan, if the premium does
25 not exceed the fees and charges described in paragraph (a)
26 that would otherwise be payable.

27 (30) "Organization" means a corporation, a government or
28 governmental subdivision, an agency, a trust, an estate, a
29 partnership, a limited liability company, a cooperative, an
30 association, a joint venture, an unincorporated organization, or
31 any other entity, however organized.

32 (31) "Payable in installments" means that payment is required
33 or permitted by written agreement to be made in more than four
34 (4) installments not including a down payment.

35 (32) "Person" includes an individual or an organization.

36 (33) "Person related to" with respect to an individual means:

37 (a) the spouse of the individual;

38 (b) a brother, brother-in-law, sister, or sister-in-law of the
39 individual;

40 (c) an ancestor or lineal descendants of the individual or the
41 individual's spouse; and

42 (d) any other relative, by blood or marriage, of the individual

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or the individual's spouse who shares the same home with the individual.

(34) "Person related to" with respect to an organization means:

(a) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) the spouse of a person related to the organization; and

(d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

(35) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed, unless and until evidence is introduced that would support a finding of its nonexistence.

(36) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(d) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(37) "Registered mortgage loan originator" means any individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

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(b) is registered with, and maintains a unique identifier through, the NMLSR.

(38) "Regularly engaged" means a person who extends consumer credit:

(a) more than twenty-five (25) times; or

(b) at least one (1) time for a mortgage transaction secured by a dwelling;

in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

(39) "Seller credit card" means an arrangement that gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(40) "Subordinate lien mortgage transaction" means a loan or consumer credit sale in which a subordinate lien mortgage, or a land contract that constitutes a subordinate lien, is created or retained against land upon which there is or will be a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(41) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

SECTION 30. IC 24-4.5-2-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 102. This chapter applies to consumer credit sales, including home solicitation sales, and consumer leases. In addition, IC 24-4.5-2-601 through IC 24-4.5-2-605 apply to consumer related sales. **Licensing under IC 24-4.5-3-502.1 applies to consumer credit sales that are subordinate lien mortgage transactions.**

SECTION 31. IC 24-4.5-2-202, AS AMENDED BY P.L.217-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 202. (1) In addition to the credit service charge permitted by IC 24-4.5-2-201 through IC 24-4.5-2-210, a seller may contract for and receive any of the following additional charges in connection with a consumer credit sale:

(a) Official fees and taxes.

(b) Charges for insurance as described in subsection (2).

(c) Notwithstanding provisions of the Federal Consumer Credit

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Protection Act concerning disclosure, charges for other benefits, including insurance, conferred on the buyer, if the benefits are of value to the buyer and if the charges are reasonable in relation to the benefits, and are excluded as permissible additional charges from the credit service charge. With respect to any additional charge not specifically provided for in this section, to be a permitted charge under this subsection the seller must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the buyer. Supporting documents may be required by the department.

The department shall determine whether the charge would be of benefit to the buyer and is reasonable in relation to the benefits.

(d) A charge not to exceed twenty-five dollars (\$25) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the debtor.

(e) Annual participation fees assessed in connection with a revolving charge account. Annual participation fees must:

(i) be reasonable in amount;

(ii) bear a reasonable relationship to the seller's costs to maintain and monitor the charge account; and

(iii) not be assessed for the purpose of circumvention or evasion of this article, as determined by the department.

(2) An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the buyer's default or other credit loss:

(a) with respect to insurance against loss of or damage to property, or against liability, if the seller furnishes a clear and specific statement in writing to the buyer, setting forth the cost of the insurance if obtained from or through the seller and stating that the buyer may choose the person, subject to the seller's reasonable approval, through whom the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the seller of the extension of credit and is clearly disclosed in writing to the buyer, and if, in order to obtain the insurance in connection with the extension of credit, the buyer gives specific, affirmative, written indication of the desire to do so after written disclosure of the cost.

(3) With respect to a ~~debt secured by an interest in land;~~

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subordinate lien mortgage transaction, the following closing costs, if the costs are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this article:

- (a) fees for title examination, abstract of title, title insurance, property surveys, or similar purposes;
- (b) fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents;
- (c) notary and credit report fees;
- (d) amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the loan finance charge; and
- (e) appraisal fees.

SECTION 32. IC 24-4.5-2-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 301. (1) For purposes of this section, "consumer credit sale" includes the sale of an interest in land which is a **first lien** mortgage transaction if the sale is otherwise a consumer credit sale. ~~(IC 24-4.5-2-104).~~

(2) The seller shall disclose to the buyer to whom credit is extended with respect to a consumer credit sale, and the lessor shall disclose to the lessee with respect to a consumer lease, the information required by the Federal Consumer Credit Protection Act.

(3) For purposes of subsection (2), disclosures shall not be required on a consumer credit sale if the transaction is exempt from the Federal Consumer Credit Protection Act.

SECTION 33. IC 24-4.5-2-407 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 407. (1) With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if, in the case of a ~~security interest in land~~ **subordinate lien mortgage transaction**, the debt secured is one thousand dollars (\$1,000) or more, or, in the case of a security interest in goods the debt secured is three hundred dollars (\$300) or more. Except as provided with respect to cross-collateral (IC 24-4.5-2-408), a seller may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

(2) With respect to a consumer lease, a lessor may not take a security interest in property of the lessee to secure the debt arising from the lease.

(3) A security interest taken in violation of this section is void.

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(4) The amounts of one thousand dollars (\$1,000) and three hundred dollars (\$300) in subsection (1) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

SECTION 34. IC 24-4.5-3-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 102. This chapter applies to consumer loans, including ~~regulated and~~ supervised loans. In addition, IC 24-4.5-3-601 through IC 24-4.5-3-605 apply to consumer related loans. **The licensing provisions of this chapter apply to consumer credit sales under IC 24-4.5-2 that are subordinate lien mortgage transactions.**

SECTION 35. IC 24-4.5-3-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 103. ~~Definitions in Chapter —~~ The following definitions apply to this Article:

"Consumer loan" Section ~~3-104~~ **1-301.5(9)**

"Consumer loan- first lien mortgage

transaction not included" Section 3-105

"Consumer related loan" Section 3-602 (1)

"Lender" Section 3-107 (1)

"Loan" Section 3-106

"Loan finance charge" Section 3-109

~~"Loan primarily secured by an interest in land" Section 3-105~~

"Precomputed" Section 3-107 (2)

"Principal" Section 3-107 (3)

"Revolving loan account" Section 3-108

"Supervised lender" Section 3-501 (2)

"Supervised loan" 3-501 (1)

SECTION 36. IC 24-4.5-3-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 301. (1) For the purposes of this section, "consumer loan" includes a loan ~~secured primarily by an interest in land which is a~~ **that is a first lien mortgage transaction if the loan is otherwise a consumer loan. (~~IC 24-4.5-3-104~~).**

(2) The lender shall disclose to the debtor to whom credit is extended with respect to a consumer loan the information required by the Federal Consumer Credit Protection Act.

(3) For purposes of subsection (2), disclosures shall not be required on a consumer loan if the transaction is exempt from the Federal Consumer Credit Protection Act.

SECTION 37. IC 24-4.5-3-502, AS AMENDED BY P.L.57-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 502. ~~Authority to Make Consumer Loans - Unless~~ **(1) A person that is a: supervised financial organization or a collection**

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agency licensed under IC 25-11-1 or has first obtained a license from the department; the person shall not regularly engage in this state in any of the following:

(1) Making consumer loans;

(2) Taking assignments of consumer loans;

(3) Undertaking direct collection of payments from or enforcement of rights against debtors arising from consumer loans. However, a person may collect and enforce for three (3) months without a license if the person promptly applies for a license and the person's application has not been denied.

(a) depository institution;

(b) subsidiary that is owned and controlled by a depository institution; or

(c) credit union service organization;

may engage in the making of consumer loans that are not mortgage transactions without obtaining a license under this article.

(2) A collection agency licensed under IC 25-11-1 may engage in:

(a) taking assignments of consumer loans in Indiana; and

(b) undertaking direct collection of payments from or enforcement of rights in Indiana against debtors arising from consumer loans;

without obtaining a license under this article.

(3) A person that does not qualify under subsection (1) or (2) shall acquire and retain a license under this section in order to regularly engage in Indiana in the following actions with respect to consumer loans that are not mortgage transactions:

(a) The making of consumer loans.

(b) Taking assignments of consumer loans in Indiana.

(c) Undertaking direct collection of payments from or enforcement of rights in Indiana against debtors arising from consumer loans.

SECTION 38. IC 24-4.5-3-502.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 502.1. (1) Unless a person:

(a) is a depository institution;

(b) is a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency;

(c) is an institution regulated by the Farm Credit Administration; or

(d) has first obtained, and subsequently retains, a license from

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the department under this article;
 the person shall not regularly engage in Indiana as a creditor in subordinate lien mortgage transactions, take assignments in Indiana of subordinate lien mortgage transactions, or undertake in the direct collection of payments from or enforcement of rights against debtors in Indiana arising from subordinate lien mortgage transactions.

(2) Each:

(a) creditor licensed by the department under this article; and
 (b) entity exempt from licensing under this article that employs a licensed mortgage loan originator;
 shall register with and maintain a valid unique identifier issued by the NMLSR. Each licensed mortgage loan originator must be employed by, and associated with, a licensed creditor or an exempt entity described under subdivision (b) in the NMLSR in order to originate loans.

(3) Applicants for a license must apply for a license under this chapter in a form prescribed by the director. Each form:

- (a) must contain content as set forth by rule, instruction, or procedure of the director; and
- (b) may be changed or updated as necessary by the director to carry out the purposes of this article.

(4) To fulfill the purposes of this article, the director may establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to:

- (a) collect and maintain records; and
- (b) process transaction fees or other fees;

related to licensees or other persons subject to this article.

(5) For the purpose of participating in the NMLSR, the director may:

- (a) waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this article; and
- (b) establish new requirements as reasonably necessary to participate in the NMLSR.

SECTION 39. IC 24-4.5-3-503, AS AMENDED BY P.L.90-2008, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 503. ~~License to Make Consumer Loans~~—(1) The department shall receive and act on all applications for licenses to make consumer loans. Applications must be as prescribed by the director of the department of financial institutions.

(2) A license shall not be issued unless the department finds that the professional training and experience, financial responsibility,

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character, and fitness of:

- (a) the applicant and any significant affiliate of the applicant;
- (b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and
- (c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

- (a) the time of application;
- (b) the time of renewal of a license; or
- (c) any other time considered necessary by the director.

(4) Evidence of compliance with this section **concerning a person licensed under section 502 of this chapter** may include **and under section 502.1 of this chapter must include:**

- (a) criminal background checks **as described in section 503.1 of this chapter**, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);
- (b) credit histories **as described in section 503.2 of this chapter**; and
- (c) surety bond requirements **as described in section 503.3 of this chapter**;
- (d) a review of licensure actions in Indiana and other states; and
- (e) other background checks considered necessary by the director.

If the director requests a national criminal history background check under subdivision (a) for an individual described in subsection (2); the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (3). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

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(5) For purposes of this section and in order to reduce the points of contact that the director may have to maintain under this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source as directed by the director.

~~(5)~~ (6) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

~~(6)~~ (7) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license as provided in IC 4-21.5.

~~(7)~~ (8) The applicant shall pay the following fees at the time designated by the department:

(a) An initial license fee as established by the department under IC 28-11-3-5.

(b) ~~An initial investigation fee~~ Examination fees as established by the department under IC 28-11-3-5.

(c) An annual renewal fee as established by the department under IC 28-11-3-5.

~~(8)~~ (9) A fee as established by the department under IC 28-11-3-5 may be charged for each day the annual renewal fee a fee under subsection ~~(7)(c)~~ is subsection (8)(b) or (8)(c) is delinquent.

~~(9)~~ The applicant may deduct the fees required under subsection ~~(7)(a) through (7)(c)~~ from the filing fees paid under IC 24-4.5-6-203.

(10) The licensee may deduct the fees required under subsection (8)(a) and (8)(c) from the filing fees paid under IC 24-4.5-6-203.

~~(10)~~ (11) A loan license issued under this section is not assignable or transferable.

~~(11)~~ Subject to subsection ~~(12)~~, the director may designate an automated central licensing system and repository, operated by a third party, to serve as the sole entity responsible for:

(a) processing applications and renewals for licenses under this section; and

(b) performing other services that the director determines are necessary for the orderly administration of the department's licensing system.

~~(12)~~ The director's authority to designate an automated central licensing system and repository under subsection ~~(11)~~ is subject to the following:

(a) The director or the director's designee may not require any person exempt from licensure under this article, or any employee

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or agent of an exempt person; to:

(i) submit information to; or

(ii) participate in;

the automated central licensing system and repository.

(b) Information stored in the automated central licensing system and repository is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

(i) obtain information from the automated central licensing system and repository, unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the automated central licensing system and repository if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the automated central licensing system and repository if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(c) Documents, materials, and other forms of information in the control or possession of the automated central licensing system and repository that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the automated central licensing system and repository;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3; subject to subpoena; subject to discovery; or admissible in evidence in any civil action. However, the director or the director's designee may use the documents, materials, or other information available to the director or the director's designee in furtherance of any action brought in connection with the director's duties under this article.

(d) Disclosure of documents, materials, and information:

(i) to the director or the director's designee; or

(ii) by the director or the director's designee;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(e) Information provided to the automated central licensing system and repository is subject to IC 4-1-11.

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- (f) This subsection does not limit or impair a person's right to:
- (i) obtain information;
 - (ii) use information as evidence in a civil action or proceeding;
 - or
 - (iii) use information to initiate a civil action or proceeding;
- if the information may be obtained from the director or the director's designee under any law.
- (g) The director may require a licensee required to submit information to the automated central licensing system and repository to pay a processing fee considered reasonable by the director.

SECTION 40. IC 24-4.5-3-503.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 503.1. (1) When the director requests a national criminal history background check under section 503(4)(a) of this chapter for an individual described in section 503(2) of this chapter, the director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested under section 503(3) of this chapter. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.**

(2) For purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency.

SECTION 41. IC 24-4.5-3-503.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 503.2. (1) If the director requests a credit report for an individual described in section 503(2) of this chapter, the individual to whom the request is made shall pay any fees or costs associated with procuring the report.**

(2) The individual must submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR or the director to

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1 obtain an independent credit report obtained from a consumer
 2 reporting agency described in Section 603(p) of the Fair Credit
 3 Reporting Act (15 U.S.C. 1681a(p)).

4 (3) The director may consider one (1) or more of the following
 5 when determining if an individual has demonstrated financial
 6 responsibility:

7 (a) Bankruptcies filed within the last ten (10) years.

8 (b) Current outstanding judgments, except judgments solely
 9 as a result of medical expenses.

10 (c) Current outstanding tax liens or other government liens or
 11 filings.

12 (d) Foreclosures within the past three (3) years.

13 (e) A pattern of serious delinquent accounts within the past
 14 three (3) years.

15 SECTION 42. IC 24-4.5-3-503.3 IS ADDED TO THE INDIANA
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2009]: Sec. 503.3. (1) Each:

18 (a) creditor licensed by the department under this article; and

19 (b) entity exempt from licensing under this article that
 20 employs a licensed mortgage loan originator;

21 must be covered by a surety bond in accordance with this section.

22 (2) A surety bond:

23 (a) must provide coverage for:

24 (i) each creditor described in subsection (1)(a); and

25 (ii) each exempt entity described in subsection (1)(b);

26 in an amount as prescribed in subsection (4); and

27 (b) must be in a form as prescribed by the director.

28 (3) The director may adopt rules or guidance documents with
 29 respect to the requirements for surety bonds as necessary to
 30 accomplish the purposes of this article.

31 (4) The penal sum of the surety bond shall be maintained in an
 32 amount that reflects the dollar amount of mortgage transactions
 33 originated as determined by the director.

34 (5) If an action is commenced on the surety bond of a creditor
 35 or an entity exempt from licensing under this article as described
 36 in subsection (1), the director may require the filing of a new bond.

37 (6) A creditor or an entity exempt from licensing under this
 38 article as described in subsection (1) shall file a new surety bond
 39 immediately upon recovery of any action on the surety bond
 40 required under this section.

41 SECTION 43. IC 24-4.5-3-503.4 IS ADDED TO THE INDIANA
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2009]: **Sec. 503.4. (1) Subject to subsection (6), the director shall designate the NMLSR to serve as the sole entity responsible for:**

(a) processing applications and renewals for licenses under section 502.1;

(b) issuing unique identifiers for licensees under section 502.1 and for entities exempt from licensing under this article that employ licensed mortgage loan originators; and

(c) performing other services that the director determines necessary for the orderly administration of the department's licensing system under section 502.1 of this chapter.

(2) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director shall regularly report significant or recurring violations of this article related to subordinate lien mortgage transactions to the NMLSR.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report complaints received regarding licensees under this article related to subordinate lien mortgage transactions to the NMLSR.

(4) The director may report publicly adjudicated licensure actions against licensees under section 502.1 of this chapter to the NMLSR.

(5) The director shall establish a process in which persons licensed in accordance with section 502.1 of this chapter may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under subsection (1) is subject to the following:

(a) Except with respect to privately insured state chartered credit unions that must comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under Section 1507 of the Safe and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE"), and entities exempt from licensing under this article that employ a licensed mortgage loan originator, the director or the director's designee may not require any person exempt from licensure under this article, or any employee or agent of an exempt person, to:

(i) submit information to; or

(ii) participate in;

the NMLSR.

(b) Information stored in the NMLSR is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A

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person may not:

(i) obtain information from the NMLSR unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(c) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the NMLSR;
are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.

(d) Disclosure of documents, materials, and information:

(i) to the director; or

(ii) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(e) Information provided to the NMLSR is subject to IC 4-1-11.

(f) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding; or

(iii) use information to initiate a civil action or proceeding; if the information may be obtained from the director or the director's designee under any law.

(g) Except as otherwise provided in the federal Housing and Economic Recovery Act of 2008, Public Law 110-289, Section 1512, the requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or

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material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(h) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the director.

(i) Information or material that is subject to a privilege or confidentiality under subdivision (g) is not subject to:

(i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) subpoena, discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(j) IC 5-14-3 relating to the disclosure of confidential supervisory information or any information or material described in subdivision (g) that is inconsistent with subdivision (g) is superseded by this section.

(k) This section does not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against persons licensed in accordance with section 502.1 of this chapter and described in section 503(2) of this chapter that are included in the NMLSR for access by the public.

(l) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether a NMLSR processing fee is reasonable, the director shall:

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(i) require review of; and

(ii) make available;

the audited financial statements of the NMLSR.

SECTION 44. IC 24-4.5-3-503.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 503.6. (1) The minimum standards for license renewal for a creditor include the following:

(a) If the creditor is licensed in accordance with section 502 of this chapter, the creditor has:

(i) paid all required fees for renewal of the license; and

(ii) filed all reports and information required by the director.

(b) If the creditor is licensed under section 502.1 of this chapter, the following:

(i) The creditor has continued to meet the surety bond requirement under section 503.3 of this chapter.

(ii) The creditor has filed the creditor's annual call report in a manner that satisfies section 505(4) of this chapter.

(iii) The creditor has paid all required fees for renewal of the license.

(iv) The creditor and individuals described in section 503(2) of this chapter continue to meet all the standards for licensing established under section 503 of this chapter.

(v) The creditor has filed all reports and information required by the director.

(2) A license issued by the department authorizing a person to engage as a creditor in consumer loans or consumer credit sales under this article may be suspended by the department if the person fails to:

(a) file any renewal form required by the department; or

(b) pay any license renewal fee described under section 503(8)(c) of this chapter;

not later than sixty (60) days after the due date.

(3) A person whose license is suspended under this section may do either of the following:

(a) Pay all delinquent fees and apply for reinstatement of the license.

(b) Appeal the suspension to the department for an administrative review under IC 4-21.5-3. The license remains in force pending the decision resulting from the hearing under IC 4-21.5-3.

SECTION 45. IC 24-4.5-3-504, AS AMENDED BY P.L.90-2008,

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SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 504. ~~Revocation or Suspension of License~~— (1)

The department may issue to a person licensed to make consumer loans **or engage in consumer credit sales that are mortgage transactions** an order to show cause why the license should not be revoked or suspended for a period determined by the department. The order shall state the place and time for a meeting with the department that is no less than ten (10) days from the date of the order. After the meeting, the department shall revoke or suspend the license if the department finds that:

(a) the licensee has repeatedly and willfully violated this article or any rule, ~~or order~~, **or guidance document** lawfully made pursuant to this article;

(b) the licensee has repeatedly and willfully violated **any other state or federal consumer credit laws, rules, or regulations; or**

(c) the licensee does not meet the licensing qualifications under section 503 of this chapter; or

~~(c)~~ **(d)** facts or conditions exist which would clearly have justified the department in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

(2) Except as provided in ~~section 503.5~~ **section 503.6(2) and 503.6(3)** of this chapter, no revocation or suspension of a license is lawful unless prior to institution of proceedings by the department notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(3) If the department finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, the department may, after a hearing upon five (5) days written notice to the licensee, enter an order suspending the license for not more than thirty (30) days.

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five (5) days after the entry of the order the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to make consumer loans may relinquish the license by notifying the department in writing of its relinquishment, but this relinquishment shall not affect the person's liability for acts previously committed.

(6) If the director determines it is in the public interest, the

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1 **director may pursue revocation of a license of a licensee that has**
 2 **relinquished the license under subsection (5).**

3 ~~(6)~~ (7) No revocation, suspension, or relinquishment of a license
 4 shall impair or affect the obligation of any preexisting lawful contract
 5 between the licensee and any debtor.

6 ~~(7)~~ (8) The department may reinstate a license **or** terminate a
 7 suspension **or grant a new** of a license to a person whose license has
 8 been revoked or suspended if **the director determines that, at the**
 9 **time the determination is made**, no fact or condition then exists
 10 which clearly would have justified the department in refusing to ~~grant~~
 11 **reinstate** a license.

12 ~~(8)~~ (9) If the director:

13 (a) has just cause to believe an emergency exists from which it is
 14 necessary to protect the interests of the public; or

15 (b) determines that the license was obtained for the benefit of, or
 16 on behalf of, a person who does not qualify for a license;

17 the director may proceed with the revocation of the license under
 18 IC 4-21.5-3-6.

19 SECTION 46. IC 24-4.5-3-505, AS AMENDED BY P.L.90-2008,
 20 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2009]: Sec. 505. ~~Records; Annual Reports~~—(1) Every
 22 ~~licensee~~ **creditor required to be licensed under this article** shall
 23 maintain records in conformity with generally accepted accounting
 24 principles and practices in a manner that will enable the department to
 25 determine whether the licensee is complying with the provisions of this
 26 article. The record keeping system of a licensee shall be sufficient if the
 27 licensee makes the required information reasonably available. The
 28 department shall determine the sufficiency of the records and whether
 29 the licensee has made the required information reasonably available.
 30 The department shall be given free access to the records wherever
 31 located. The records pertaining to any loan shall be retained for two (2)
 32 years after making the final entry relating to the loan, but in the case of
 33 a revolving loan account the two (2) years is measured from the date of
 34 each entry. A person licensed or required to be licensed under this
 35 chapter is subject to IC 28-1-2-30.5 with respect to any records
 36 maintained by the person.

37 **(2) The unique identifier of any person originating a mortgage**
 38 **transaction must be clearly shown on all mortgage transaction**
 39 **application forms and any other documents as required by the**
 40 **director.**

41 **(3) Every licensee that engages in mortgage transactions shall**
 42 **use automated examination and regulatory software designated by**

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the director, including third party software. Use of the software consistent with guidance documents and policies issued by the director is not a violation of IC 28-1-2-30.

(4) Each creditor licensed by the department that engages in mortgage transactions shall submit to the NMLSR a call report, which must be in the form and contain information the NMLSR requires.

~~(2)~~ (5) Every licensee creditor required to be licensed under this article shall file with the department a composite report as required by the department, but not more frequently than annually, in the form prescribed by the department relating to all consumer loans made by the licensee. The department shall consult with comparable officials in other states for the purpose of making the kinds of information required in the reports uniform among the states. Information contained in the reports shall be confidential and may be published only in composite form. The department may impose a fee in an amount fixed by the department under IC 28-11-3-5 for each day that a licensee creditor fails to file the report required by this subsection.

~~(3)~~ (6) Every licensee A creditor required to be licensed under this article shall file notification with the department if the licensee:

- (a) has a change in name, address, or principals;
 - (b) opens a new branch, closes an existing branch, or relocates an existing branch;
 - (c) files for bankruptcy or reorganization; or
 - (d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensee's activities;
- not later than thirty (30) days after the date of the event described in this subsection.

~~(4)~~ (7) Every licensee shall file notification with the department if an individual described in section 503(2)(b) or 503(2)(c) of this chapter: the licensee or a key officer or director of the licensee

- (a) is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or
 - ~~(b)~~ has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction
- not later than thirty (30) days after the date of the event described in this subsection.

SECTION 47. IC 24-4.5-4-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 102. (1) Except as provided in subsection (2), this chapter applies to insurance provided

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or to be provided in relation to a consumer credit sale (IC 24-4.5-2-104), a consumer lease (IC 24-4.5-2-106), or a consumer loan (~~IC 24-4.5-3-104~~). **(IC 24-4.5-1-301.5(9)).**

(2) The provision on cancellation by a creditor (IC 24-4.5-4-304) applies to loans the primary purpose of which is the financing of insurance. No other provision of this chapter applies to insurance so financed.

(3) This chapter supplements and does not repeal IC 27-8-4 (the credit insurance act). The provisions of this article concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, and the similar provisions of IC 27-8-4 do not apply to creditors and debtors.

SECTION 48. IC 24-4.5-5-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 201. For purposes of the provisions on civil liability for violation of disclosure provisions (IC 24-4.5-5-203) and on debtor's right to rescind certain transactions (IC 24-4.5-5-204):

(1) consumer credit sale includes a sale ~~of an interest in land which is a mortgage transaction that is a first lien mortgage transaction~~ if the sale is otherwise a consumer credit sale; (~~IC 24-4.5-2-104~~); and

(2) consumer loan includes a loan ~~primarily secured by an interest in land which is a mortgage transaction that is a first lien mortgage transaction~~ if the loan is otherwise a consumer loan (IC 24-4.5-3-105).

SECTION 49. IC 24-4.5-5-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 301. (1) A lender who knowingly makes charges in excess of those permitted by the provisions of this article commits a Class A misdemeanor.

(2) A person ~~other than a supervised financial organization~~, who knowingly engages in the business of making consumer loans without a license in violation of the provisions of this article applying to authority to make consumer loans (IC 24-4.5-3-502 **and IC 24-4.5-3-502.1**) commits a Class A misdemeanor.

(3) A person who knowingly:

(a) engages in the business of making consumer credit sales, consumer leases, or consumer loans, or of taking assignments of rights against debtors; and

(b) undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of this article concerning notification (IC 24-4.5-6-202) or payment of fees (IC 24-4.5-6-203);

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commits a Class A infraction.

SECTION 50. IC 24-4.5-6-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 102. (a) IC 24-4.5-6-101 through IC 24-4.5-6-117 apply to persons who in this state:

(1) make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales (IC 24-4.5-2-602) and consumer related loans (IC 24-4.5-3-602); or

(2) directly collect payments from or enforce rights against debtors arising from sales, leases, or loans specified in subsection (1), wherever they are made.

(b) For purposes of IC 24-4.5-6-101 through IC 24-4.5-6-117:

(1) "Consumer credit sale" includes a sale ~~of an interest in land which is a mortgage transaction that is a first lien mortgage transaction~~ if the sale is otherwise a consumer credit sale.

(2) "Consumer loan" includes a loan ~~secured by an interest in land which is a mortgage transaction that is a first lien mortgage transaction~~ if the loan is otherwise a consumer loan.

SECTION 51. IC 24-4.5-6-105 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 105. ~~Administrative Powers with Respect to Supervised Financial Organizations~~ — (1) With respect to ~~supervised financial organizations~~, **depository institutions**, the powers of examination and investigation ~~(IC 24-4.5-3-506 and (IC 24-4.5-6-106)~~ and administrative enforcement (IC 24-4.5-6-108) shall be exercised by the department. The department may, at its discretion, accept any examination of any financial institution made by a federal authority in lieu of the examination made under the provisions of this article. All other powers of the department under this article may be exercised by ~~him the director~~ with respect to a ~~supervised financial organization~~. **depository institution.**

(2) If the department receives a complaint or other information concerning noncompliance with this article by a ~~supervised financial organization~~, **he depository institution**, the director shall inform the official or agency having supervisory authority over the organization concerned. The department may request information about ~~supervised financial organizations~~ **depository institutions** from the officials or agencies supervising them.

(3) The department and any official or agency of this state having supervisory authority over a ~~supervised financial organization~~ **depository institution** are authorized and directed to consult and assist one another in maintaining compliance with this article. They may

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1 jointly pursue investigations, prosecute suits, and take other official
 2 action, as they deem appropriate, if either of them otherwise is
 3 empowered to take the action.

4 SECTION 52. IC 24-4.5-6-106, AS AMENDED BY P.L.217-2007,
 5 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2009]: Sec. 106. ~~Examinations~~ — (1) In administering this
 7 article and in order to determine whether the provisions of this article
 8 are being complied with by persons engaging in acts subject to this
 9 article, the department may examine the records of persons and may
 10 make investigations of persons as may be necessary to determine
 11 compliance. Records subject to examination under this section include
 12 the following:

- 13 (a) Training, operating, and policy manuals.
- 14 (b) Minutes of:
 - 15 (i) management meetings; and
 - 16 (ii) other meetings.
- 17 (c) Other records that the department determines are necessary to
 18 perform its investigation or examination.

19 The department may also administer oaths or affirmations, subpoena
 20 witnesses, **and compel their the attendance of witnesses, including**
 21 **officers, principals, mortgage loan originators, employees,**
 22 **independent contractors, agents, and customers of the licensee,**
 23 **individual, or person subject to this article. The department may**
 24 **also** adduce evidence, and require the production of any matter which
 25 is relevant to the investigation. The department shall determine the
 26 sufficiency of the records maintained and whether the person has made
 27 the required information reasonably available. The records pertaining
 28 to any transaction subject to this article shall be retained for two (2)
 29 years after making the final entry relating to the consumer credit
 30 transaction, but in the case of a revolving loan account or revolving
 31 charge account, the two (2) years is measured from the date of each
 32 entry.

33 **(2) The department's examination and investigatory authority**
 34 **under this article includes the following:**

- 35 **(a) The authority to require a creditor to refund overcharges**
 36 **resulting from the creditor's noncompliance with the terms of**
 37 **a subordinate lien mortgage transaction.**
- 38 **(b) The authority to require a creditor to comply with the**
 39 **penalty provisions set forth in IC 24-4.5-3-209.**
- 40 **(c) The authority to investigate complaints filed with the**
 41 **department by debtors.**

42 ~~(2)~~ (3) If the department:

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1 (a) investigates; or

2 (b) examines the books and records of;

3 a person that is subject to IC 24-4.5-6-201, IC 24-4.5-6-202, and
 4 IC 24-4.5-6-203, the person shall pay all reasonably incurred costs of
 5 the investigation or examination in accordance with the fee schedule
 6 adopted by the department under IC 28-11-3-5. However, the person is
 7 liable for the costs of an investigation or examination under this
 8 subsection only to the extent that the costs exceed the amount of the
 9 filing fees paid most recently under IC 24-4.5-6-203. Any costs
 10 required to be paid under this subsection shall be paid not later than
 11 sixty (60) days after the person receives a notice from the department
 12 of the costs being assessed. The department may impose a fee, in an
 13 amount fixed by the department under IC 28-11-3-5, for each day that
 14 the assessed costs are not paid, beginning on the first day after the sixty
 15 (60) day period described in this subsection.

16 ~~(3)~~ (4) The department shall be given free access to the records
 17 wherever located. **In making any examination or investigation**
 18 **authorized by this article, the director may control access to any**
 19 **documents and records of the licensee or person under**
 20 **examination or investigation. The director may take possession of**
 21 **the documents and records or place a person in exclusive charge of**
 22 **the documents and records in the place where the documents are**
 23 **usually kept. During the period of control, the licensee or person**
 24 **may not remove or attempt to remove any of the documents and**
 25 **records except under a court order or with the consent of the**
 26 **director. Unless the director has reasonable grounds to believe the**
 27 **documents or records of the licensee or person have been, or are,**
 28 **at risk of being altered or destroyed for purposes of concealing a**
 29 **violation of this article, the licensee or person being examined or**
 30 **investigated is entitled to access to the documents or records as**
 31 **necessary to conduct the licensee's or person's ordinary business**
 32 **affairs.** If the person's records are located outside Indiana, the records
 33 shall be made available to the department at a convenient location
 34 within Indiana, or the person shall pay the reasonable and necessary
 35 expenses for the department or its representative to examine them
 36 where they are maintained. The department may designate comparable
 37 officials of the state in which the records are located to inspect them on
 38 behalf of the department.

39 ~~(4)~~ (5) Upon a person's failure without lawful excuse to obey a
 40 subpoena or to give testimony and upon reasonable notice to all
 41 affected persons, ~~affected thereby~~, the department may apply to any
 42 civil court with jurisdiction for an order compelling compliance.

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(5) (6) The department shall not make public the name or identity of a person whose acts or conduct the department investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this article.

SECTION 53. IC 24-4.5-6-106.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 106.5. To carry out the purposes of this section, the director may:**

(a) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce regulatory burden by sharing:

(i) resources;

(ii) standardized or uniform methods or procedures; and

(iii) documents, records, information, or evidence obtained under this section;

(c) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a licensee, an individual, or a person subject to this article;

(d) accept and rely on examination or investigation reports made by other government officials, in or outside Indiana; or

(e) accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

SECTION 54. IC 24-4.5-6-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 107. Except as otherwise provided, IC 4-21.5-3 governs all agency action taken by the department under ~~IC 24-4.5-6~~ **this chapter** or IC 24-4.5-3-501 through IC 24-4.5-3-513. **All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County, Indiana.** The provisions of IC 4-22-2 prescribing procedures for the adoption of rules by agencies shall apply to the adoption of rules by the department of financial institutions under this article. However, if the department declares an emergency in the

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document containing the rule, it may adopt rules permitted by
~~IC 24-4.5-6~~ **this chapter** under IC 4-22-2-37.1.

SECTION 55. IC 24-4.5-6-107.5 IS ADDED TO THE INDIANA
 CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2009]: **Sec. 107.5. It is a violation of this
 article for a person or individual subject to this article to:**

(a) directly or indirectly employ any scheme, device, or
 artifice to defraud or mislead borrowers or lenders or to
 defraud any person;

(b) engage in any unfair or deceptive practice toward any
 person;

(c) obtain property by fraud or misrepresentation;

(d) solicit or enter into a contract with a borrower that
 provides in substance that the person or individual subject to
 this article may earn a fee or commission through "best
 efforts" to obtain a loan even though no loan is actually
 obtained for the borrower;

(e) solicit, advertise, or enter into a contract for specific
 interest rates, points, or other financing terms unless the
 terms are actually available at the time of soliciting,
 advertising, or contracting;

(f) conduct any business covered by this article without
 holding a valid license as required under this article, or assist
 or aid and abet any person in the conduct of business under
 this article without a valid license as required under this
 article;

(g) fail to make disclosures as required by this article and any
 other applicable state or federal law, including regulations
 under that law;

(h) fail to comply with this article or rules adopted under this
 article, or fail to comply with any other state or federal law,
 rule, or regulation, applicable to any business authorized or
 conducted under this article;

(i) make, in any manner, any false or deceptive statement or
 representation, including, with regard to the rates, points, or
 other financing terms or conditions for a mortgage
 transaction, or engage in bait and switch advertising;

(j) negligently make any false statement or knowingly and
 willfully make any omission of material fact in connection
 with any information or reports filed with a governmental
 agency or the NMLSR or in connection with any investigation
 conducted by the director or another governmental agency;

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1 (k) make any payment, threat, or promise, directly or
 2 indirectly, to any person for the purposes of influencing the
 3 independent judgment of the person in connection with a
 4 mortgage transaction, or make any payment, threat, or
 5 promise, directly or indirectly, to any appraiser of a property,
 6 for the purposes of influencing the independent judgment of
 7 the appraiser with respect to the value of the property;

8 (l) collect, charge, attempt to collect or charge, or use or
 9 propose any agreement purporting to collect or charge any
 10 fee prohibited by this article;

11 (m) cause or require a borrower to obtain property insurance
 12 coverage in an amount that exceeds the replacement cost of
 13 the improvements as established by the property insurer;

14 (n) fail to account truthfully for money belonging to a party
 15 to a mortgage transaction; or

16 (o) knowingly withhold, abstract, remove, mutilate, destroy,
 17 or secrete any books, records, computer records, or other
 18 information subject to examination under this article.

19 SECTION 56. IC 24-4.5-6-108 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 108. ~~Administrative~~
 21 ~~Enforcement orders.~~ — (1) After notice and ~~hearing an opportunity~~
 22 ~~to be heard~~, the department may order a creditor, or ~~a person acting in~~
 23 ~~his behalf a person acting on behalf of the creditor~~, to cease and
 24 desist from engaging in violations of this article. A respondent
 25 aggrieved by an order of the department may obtain judicial review of
 26 the order and the department may obtain an order of the court for
 27 enforcement of its order in any civil court. The proceeding for review
 28 or enforcement is initiated by filing a petition in the court. Copies of
 29 the petition shall be served upon all parties of record.

30 (2) Within thirty (30) days after service of the petition for review
 31 upon the department, or within any further time the court may allow,
 32 the department shall transmit to the court the original or a certified
 33 copy of the entire record upon which the order is based, including any
 34 transcript of testimony, which need not be printed. By stipulation of all
 35 parties to the review proceeding, the record may be shortened. After
 36 hearing the court may (a) reverse or modify the order if the findings of
 37 fact of the department are clearly erroneous in view of the reliable,
 38 probative, and substantial evidence on the whole record, (b) grant any
 39 temporary relief or restraining order it deems just, and (c) enter an
 40 order enforcing, modifying, and enforcing as modified, or setting aside
 41 in whole or in part the order of the department, or remanding the case
 42 to the department for further proceedings.

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(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of adducing additional specified and material evidence and seeking finding thereon upon good cause shown for the failure to adduce this evidence before the department.

(4) The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the court on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated within thirty (30) days after a copy of the order of the department is received. If no proceeding is so initiated, the department may obtain a decree of the civil court for enforcement of its order upon a showing that an order was issued in compliance with this section, that no proceeding for review was initiated within thirty (30) days after copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the department may not issue an order pursuant to this section but may bring a civil action for an injunction (IC 24-4.5-6-111).

SECTION 57. IC 24-4.5-6-110 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 110. ~~Injunctions Against Violation of Article~~ — The department may bring a civil action to restrain a person from violating this article **or another state or federal law or regulation**, and for other appropriate relief.

SECTION 58. IC 24-4.5-6-201, AS AMENDED BY P.L.217-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 201. (1) This section ~~IC 24-4.5-6-202~~, and ~~IC 24-4.5-6-203~~ **sections 202 and 203 of this chapter** apply to a person, including a ~~supervised financial organization~~, **depository institution**, but not including a collection agency licensed under IC 25-11-1, engaged in Indiana in any of the following:

(a) Making consumer credit sales, consumer leases, or consumer loans.

(b) Taking assignments of rights against debtors that arise from sales, leases, or loans by a person having an office or a place of business in Indiana.

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(c) Undertaking direct collection of payments from the debtors or enforcement of rights against the debtors.

(d) Placing consumer credit insurance, receiving commissions for consumer credit insurance, or acting as a limited line credit insurance producer in the sale of consumer credit insurance.

(e) Selling insurance or other benefits, the charges for which are approved by the department as additional charges under IC 24-4.5-2-202 or IC 24-4.5-3-202.

(2) This section ~~IC 24-4.5-6-202, and IC 24-4.5-6-203~~ and **sections 202 and 203 of this chapter** are not applicable to a seller whose credit sales consist entirely of sales made pursuant to a seller credit card issued by a person other than the seller if the issuer of the card has complied with the provisions of this section ~~IC 24-4.5-6-202, and IC 24-4.5-6-203, and sections 202 and 203 of this chapter.~~

(3) This section ~~IC 24-4.5-6-202, and IC 24-4.5-6-203~~ and **sections 202 and 203 of this chapter** apply to a seller whose credit sales are made using credit cards that:

(a) are issued by a lender;

(b) are in the name of the seller; and

(c) can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

SECTION 59. IC 24-4.5-6-202, AS AMENDED BY P.L.217-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 202. (1) Persons ~~other than applicants for a license under IC 24-4.5-3-502(3),~~ that are subject to ~~IC 24-4.5-6-201,~~ this section and ~~IC 24-4.5-6-203~~ **sections 201 and 203 of this chapter** shall file notification with the department within thirty (30) days after commencing business in Indiana and thereafter on an annual basis, on the date set forth in subsection (2). The notification shall state the:

(a) name of the person;

(b) name in which business is transacted if different from subdivision (a);

(c) address of principal office, which may be outside Indiana; and

(d) address of all offices or retail stores, if any, in Indiana at which consumer credit sales, consumer leases, or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within Indiana at which business is transacted.

(2) A person required to be licensed under this article shall file the notification required by subsection (1) not later than December 31 of each year. All other persons subject to this section shall file the notification required by subsection (1) not later than January 31 of each

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year.

(3) Persons subject to ~~IC 24-4.5-6-201~~, ~~IC 24-4.5-6-203~~, **sections 201 and 203 of this chapter** and this section shall notify the department not later than thirty (30) days after the person:

- (a) has a change in name, address, or principals;
- (b) opens a new branch, closes an existing branch, or relocates an existing branch;
- (c) files for bankruptcy or reorganization;
- (d) is notified that the person is subject to revocation or suspension proceedings by a state or governmental authority with regard to the person's activities;
- ~~(e) is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or~~
- ~~(f)~~ (e) has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

SECTION 60. IC 26-1-4-102.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 102.5. **(a) As used in this section, "supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:**

- (1) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and**
- (2) subject to supervision by an official or agency of a state or of the United States.**

(b) The provisions of IC 26-1-4 which apply to a bank apply equally to any supervised financial organization ~~as defined in IC 24-4.5-1-301~~, which is authorized by state or federal law to permit persons to make withdrawals or payments from accounts by negotiable instruments.

SECTION 61. IC 32-28-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) As used in this section, "lender" refers to:

- (1) an individual;
- (2) a supervised financial organization (as defined in ~~IC 24-4.5-1-301~~); **IC 26-1-4-102.5**);
- (3) an insurance company or a pension fund; or
- (4) any other entity that has the authority to make loans.

(b) The recorder shall record the statement and notice of intention

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to hold a lien when presented under section 3 of this chapter in the miscellaneous record book. The recorder shall charge a fee for recording the statement and notice in accordance with IC 36-2-7-10. When the statement and notice of intention to hold a lien is recorded, the lien is created. The recorded lien relates back to the date the mechanic or other person began to perform the labor or furnish the materials or machinery. Except as provided in subsections (c) and (d), a lien created under this chapter has priority over a lien created after it.

(c) The lien of a mechanic or materialman does not have priority over the lien of another mechanic or materialman.

(d) The mortgage of a lender has priority over all liens created under this chapter that are recorded after the date the mortgage was recorded, to the extent of the funds actually owed to the lender for the specific project to which the lien rights relate. This subsection does not apply to a lien that relates to a construction contract for the development, construction, alteration, or repair of the following:

(1) A Class 2 structure (as defined in IC 22-12-1-5).

(2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).

(3) Property that is:

(A) owned, operated, managed, or controlled by:

(i) a public utility (as defined in IC 8-1-2-1);

(ii) a municipally owned utility (as defined in IC 8-1-2-1);

(iii) a joint agency (as defined in IC 8-1-2.2-2);

(iv) a rural electric membership corporation formed under IC 8-1-13-4;

(v) a rural telephone cooperative corporation formed under IC 8-1-17; or

(vi) a not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

SECTION 62. IC 35-45-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) This chapter applies only:

(1) to consumer loans, consumer related loans, consumer credit sales, consumer related sales, and consumer leases, as those terms are defined in IC 24-4.5, subject to adjustment, where applicable, of the dollar amounts set forth in those definitions under IC 24-4.5-1-106;

(2) to any loan primarily secured by an interest in land or sale of

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1 an interest in land that is a mortgage transaction (as defined in
 2 ~~IC 24-4.5-1-301~~) **IC 24-4.5-1-301.5**) if the transaction is
 3 otherwise a consumer loan or consumer credit sale; and
 4 (3) to any other loan transaction or extension of credit, regardless
 5 of the amount of the principal of the loan or extension of credit,
 6 if unlawful force or the threat of force is used to collect or to
 7 attempt to collect any of the property loaned or any of the
 8 consideration for the loan or extension of credit in question.
 9 (b) This chapter applies regardless of whether the contract is made
 10 directly or indirectly, and whether the receipt of the consideration is
 11 received or is due to be received before or after the maturity date of the
 12 loan.
 13 SECTION 63. THE FOLLOWING ARE REPEALED [EFFECTIVE
 14 JULY 1, 2009]: IC 24-4.5-1-301; IC 24-4.5-1-303; IC 24-4.5-2-104;
 15 IC 24-4.5-3-104; IC 24-4.5-3-503.5; IC 24-4.5-3-506; IC 24-4.5-3-507;
 16 IC 24-4.5-6-103.5.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1634, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1634 as introduced.)

BARDON, Chair

Committee Vote: yeas 9, nays 0.

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P
Y

